CLERK'S COPY.

TRANSCRIPT OF RECORD.

[redacted] COURT OF THE UNITED STATES.

[redacted] TERM, [redacted]

No. [redacted] 173

[redacted] PERCH, MOSES CLAY PERCH, AND [redacted] INVESTMENT COMPANY, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA.

[redacted]

[redacted]

(27,293)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 538.

CLAY ARTHUR PIERCE, HENRY CLAY PIERCE, AND PIERCE INVESTMENT COMPANY, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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a Pleas and Proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the December Term, 1918, of said Court, before the Honorable William C. Hook and the Honorable Kimbrough Stone, Circuit Judges, and the Honorable Martin J. Wade, District Judge.

Attest:

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered that heretofore, to-wit: on the first day of April, A. D. 1918, a transcript of record pursuant to an appeal allowed by the District Court of the United States for the Eastern District of Missouri, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit in a certain cause wherein Clay Arthur Pierce, et al., were Appellants, and the United States of America was Appellee, which said transcript as prepared and printed, under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, is in the words and figures following, to-wit:

1 (*Waiver of Citation.*)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

No. 4538. In Equity.

UNITED STATES OF AMERICA, Plaintiff,

vs.

WATERS PIERCE OIL COMPANY, HENRY S. PRIEST, CLAY ARTHUR PIERCE, HENRY CLAY PIERCE INVESTMENT TRUST COMPANY, Defendants.

Plaintiff in the above entitled cause hereby waives the issuance of citation upon the appeal of the defendants to the United States Circuit Court of Appeals for the Eighth Circuit, from the judgment entered in the district court of the United States for the Eastern Division of the Eastern District of Missouri, on the 11th day of March 1918, and agrees to enter its appearance in said Circuit Court of Appeals for the Eighth Circuit to the May term thereof.

UNITED STATES OF AMERICA,
By W. H. WOODWARD,
Its Attorney.

Endorsed: Filed in the District Court on March 22, 1918.

UNITED STATES OF AMERICA,
Eastern Division of the Eastern
Judicial District of Missouri, ss:

In the District Court of the United States Within and for the Eastern Division of the Eastern Judicial District of Missouri.

Be It Remembered, that heretofore, to-wit on the 18th day of February, in the year of our Lord one thousand nine hundred and sixteen, there was filed in the office of the Clerk of the District Court of the United States within and for the Eastern Division of the Eastern Judicial District of Missouri, a certain bill of complaint wherein United States of America, is Plaintiff, and Waters Pierce Oil Company, Henry S. Priest, Clay Arthur Pierce, Henry Clay Pierce, and Pierce Investment Trust Company, are defend-
2 ants, which said bill of complaint was duly numbered 4538, and is in words and figures as follows, to wit:

(*Bill of Complaint.*)

To the Honorable the Judges of the District Court of United States for the Eastern District of Missouri, Sitting in Equity:

Your petitioner, the United States of America, by Arthur L. Oliver, its attorney for the Eastern District of Missouri, brings this proceeding in equity against the Waters Pierce Oil Company, Henry S. Priest, Clay Arthur Pierce, Henry Clay Pierce, and Pierce Investment Trust Company, for the purpose of collecting a judgment obtained by the United States in the District Court for the Western District of Louisiana, which said judgment bears date of March 20, 1914, and is for the sum of Fourteen Thousand Dollars, interest and costs, and upon information and belief your petitioner alleges and shows—

I.

That the Waters Pierce Oil Company, is, and at all times herein mentioned was, a corporation duly organized, existing and doing business under and by virtue of the laws of Missouri, with its principal place of business at the City of Saint Louis, Missouri; that Pierce Investment Trust Company is, and at all times herein mentioned was, a corporation organized, existing and doing business under and by virtue of the laws of Missouri, with its principal place of business at the City of Saint Louis, Missouri; and that Henry S. Priest, Clay Arthur Pierce, and Henry Clay Pierce, are all citizens of the State of Missouri and reside within the Eastern District of Missouri and within the jurisdiction of this Court.

II.

Your petitioner alleges that on January 29, 1907, at the January Term of the District Court for the Western District of Louisiana, held in the City of Alexandria, in said State, an indictment was returned and filed against the Waters Pierce Oil Company, which said indictment was assigned number 1626 on the docket of said Court and charged the said defendant, Waters Pierce Oil Company, with receiving certain rebates and concessions in violation of the Elkins Act of February 19, 1903, (32 Stat. 847); that thereafter the said case, proceeding to trial on March 20, 1914, the jury returned a verdict of guilty upon which the Court entered a judgment in favor of the plaintiff for the sum of Fourteen Thousand Dollars
3 and costs; that said costs amount to Fourteen Hundred and Seventy-four dollars and Forty-four Cents; that thereafter, to-wit, on April 21, 1914, the said Waters Pierce Oil Company was allowed a writ of error to the United States Court of Appeals for the Fifth Circuit, and upon hearing duly had the said Court of Appeals affirmed the judgment of the District Court and the mandate of said Court of Appeals affirming said judgment was filed in the District Court aforesaid on June 23, 1915; that thereafter an execution upon said judgment was issued out of said District Court, upon which said execution the United States Marshal for the Western District of Louisiana, on August 2, 1915, made a nulla bona return. Your petitioner avers that said defendant, or anyone for it, has failed and does fail and refuse to pay said judgment or any part thereof.

III.

Your petitioner further alleges that — an adjourned regular meeting of the Board of Directors of the Waters Pierce Oil Company held on the 9th day of July, 1913, at No. 420 Olive Street, in the City of Saint Louis, the said Board of Directors, pursuant to a request of holders of more than four-fifths of the capital stock of said corporation, did authorize the sale of all of the property of said corporation to the Pierce Oil Corporation organized under the laws of the State of Virginia, for and in consideration of Ten Million Five Hundred Thousand Dollars, of the common capital stock of said Pierce Oil Corporation, and Five Million Dollars in cash of the lawful money of the United States; that Clay Arthur Pierce and Henry S. Priest were, by the said Board of Directors, appointed agents and trustees of the Waters Pierce Oil Company to receive from the Pierce Oil Corporation the consideration aforesaid. A copy of the minutes of the said meeting of the Board of Directors of the Waters Pierce Oil Company is hereunto annexed and marked Exhibit A.

IV.

Your petitioner further avers that pursuant to the authority granted them by the Board of Directors, as alleged in paragraph

numbered III, Clay Arthur Pierce and T. F. Lydon, President and Secretary respectively of the Waters Pierce Oil Company, and acting for said company, did, by an indenture dated July 7, 1913, and by other indentures, deeds and assignments the date and character of which are to your petitioner unknown, convey to Pierce Oil Corporation all of its property and assets.

4

V.

Your petitioner further avers that, pursuant to the authority granted them by the Board of Directors of the Waters Pierce Oil Company, as alleged in paragraph III, Henry S. Priest and Clay Arthur Pierce, as trustee and agents for said Waters Pierce Oil Company, did receive from the Pierce Oil Corporation Ten Million Five Hundred Thousand Dollars par value of the common stock of said Pierce Oil Corporation, and Five Million Dollars in cash, which said stock and money represented and was received by them in return for the total assets of the Waters Pierce Oil Company.

VI.

Your petitioner further avers that said Henry S. Priest and Clay Arthur Pierce now hold, as trustees for Waters Pierce Oil Company, certain moneys and certain stock of the Pierce Oil Corporation, the exact amount of either being to your petitioner unknown.

VII.

Your petitioner further avers that at the time of the transfer of its assets by the Waters Pierce Oil Company to the Pierce Oil Corporation, Henry Clay Pierce was the owner of two thousand, seven hundred and twenty-seven shares of the common stock of the Waters Pierce Oil Company; and that the Pierce Investment Trust Company was the owner of one thousand shares of the common stock of the Waters Pierce Oil Company; and that Clay Arthur Pierce was the owner of one share of the common stock of the Waters Pierce Oil Company; and that they, and each of them, have received from Clay Arthur Pierce and Henry S. Priest certain proportions of the money and stock held by the said Henry S. Priest and Clay Arthur Pierce as trustees for the Waters Pierce Oil Company, as alleged in paragraph V; petitioner states that he is informed and believes that Henry Clay Pierce received the sum of Three Million, Four Hundred and Eight Thousand, Seven Hundred and Fifty Dollars; and that Pierce Investment Trust Company received the sum of One Million, Two Hundred and Fifty Thousand Dollars; and that Clay Arthur Pierce received the sum of One Thousand, Two Hundred and Fifty Dollars.

VIII.

Your petitioner further avers that the Waters Pierce Oil Company has no assets out of which a judgment could be collected, and that in equity and good conscience the money received from the sale of the assets of the Waters Pierce Company and now in the hands of its stockholders, agents and trustees, as herein alleged, ought to be subjected to the payment of the judgment of your petitioner as alleged in paragraph I.

Wherefore, your petitioner prays:

1. That writs of subpœna issue directed to defendants Waters Pierce Oil Company, Henry S. Priest, Clay Arthur Pierce, Henry Clay Pierce, and Pierce Investment Trust Company, commanding each of them to appear herein and answer the allegations contained in the foregoing petition, and abide by and perform such orders and decree as the Court may make in the premises; 2. That the Court adjudge and decree that the Waters Pierce Oil Company has no property or assets subject to execution out of which your petitioner's judgment may be collected; 3. That the Court adjudge and decree that the money and property received from the Pierce Oil Corporation and in the hands of Clay Arthur Pierce and Henry S. Priest is held in trust by them for the benefit of the Waters Pierce Oil Company and should be subjected to the payment of the debts and liabilities of the Waters Pierce Oil Company, and more particularly the judgment of your petitioner; 4. That during the pendency of this suit the defendants Henry S. Priest and Clay Arthur Pierce be restrained from conveying or assigning any money or property held by them as trustees or agents of the Waters Pierce Oil Company; 5. That the Court adjudge and decree that Henry Clay Pierce, Pierce Investment Trust Company, and Clay Arthur Pierce received moneys derived from the sale of the assets of the Waters Pierce Oil Company, and that the same be subjected to the payment of the debts and liabilities of the Waters Pierce Oil Company, and more particularly the judgment of your petitioner; 6. That your petitioner have judgment against said defendants for the sum of Fifteen Thousand, Four Hundred and Seventy-four Dollars and Forty-four Cents; 7. For such other orders and decrees as, the premises considered, may be in equity meet and proper.

(Signed) ARTHUR L. OLIVER,
United States Attorney.

(Signed) W. H. WOODWARD,
Assistant United States Attorney.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

On this 18 day of February, 1916, before me personally appeared Arthur L. Oliver, who, being by me duly affirmed, deposes and says that he is the United States Attorney for the Eastern Dis-

trict of Missouri, and that he brings this action for and in behalf of the United States of America, and that he has read the foregoing bill of complaint and knows the contents thereof and that the same is true, of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

(Signed) ARTHUR L. OLIVER.

Affirmed and subscribed to before me this 18 day of February, 1916.

(Signed) IRVING MITCHELL,

[SEAL] *United States Commissioner at St. Louis, Missouri.*

EXHIBIT "A."

(*Minutes of Meeting of Board of Directors of the Waters Pierce Oil Company, July 9, 1913.*)

Office of Waters Pierce Oil Company.

ST. LOUIS, MO., July 9, 1913.

The adjourned regular monthly meeting of the Board of Directors of the Waters Pierce Oil Company was held at the Company's Office, # 420 Olive Street, in the City of St. Louis, at eleven o'clock A. M., this, the 9th day of July, 1913, as per adjournment on the 7th inst.

There were present and participated in the meeting the following Directors,—Andrew M. Finlay, Thomas F. Lydon and J. A.
7 Steward.

The Chairman of the Board and President being absent, Mr. Andrew M. Finlay, Vice-President, presided and Thomas L. Lydon, Secretary, acted in that capacity.

Minutes of the meeting held on the 7th instant were read and approved.

Vice President Finlay stated to the Board that the Pierce Oil Corporation had been formed under the laws of the State of Virginia, and was prepared to take over all of the property and assets of this corporation, giving to this corporation $10,500,000, in par value of the capital stock oof said Pierce Oil Corporation, $5,000,000, in cash, in lawful money of the United States, and assuming all of the debts, liabilities and obligations of this corporation. Vice President Finlay stated further that the holders of more than four-fifths of the stock of this corporation had, in writing, requested the Board of Directors to make such transfer, and he duly presented such request in writing to the Board of Directors.

It was, on motion duly seconded, ordered that such request be received, and be spread on the minutes of this meeting as a part thereof, which is accordingly done as follows, viz:

ST. LOUIS, Mo., July 7, 1913.

"We, the undersigned stockholders of Waters Pierce Oil Company, a corporation organized under the laws of the State of Missouri, comprising the holders of more than four-fifths of the capital stock of said Corporation, hereby do request, authorize and direct the Board of Directors of said Corporation to transfer all of the assets of said Corporation, including all of its real, personal and mixed property, and chattels real, corporeal and incorporeal, of every name and nature, to Pierce Oil Corporation, a corporation organized and existing under the laws of the State of Virginia, in return for $10,500,000 par value of the common capital stock of said Corporation, $5,000,000 in cash in lawful money of the United States, and the assumption by said Pierce Oil Corporation of all of the debts, liabilities and obligations of the Waters Pierce Oil Company.

"This instrument may be signed in more than one original counterpart and all orginal counterparts together shall be and be deemed to be a single instrument.

8 "In Witness Whereof, the undersigned have personally or by their respective duly constituted attorneys hereto subscribed their names, and written opposite thereto the number of shares held and owned by them in the said Waters Pierce Oil Company.

"Witness:
"ALEXANDER B. SIEGEL.

H. C. PIERCE, 2727 shares
By EVEN RICHARDS, *Atty.*
"PIERCE INVESTMENT TRUST COMPANY, 1000 shares
By JOSEPH A. STEWARD, *Secretary.*
"ANDREW M. FINLAY, 1 share
"T. F. LYDON, 1 share
"J. A. STEWARD, 1 share
"CLAY ARTHUR PIERCE, 1 share."

The following preamble and resolutions were then moved, seconded and unanimously adopted:

"Whereas, Pierce Oil Corporation, a corporation organized under the laws of the State of Virginia, desires to purchase and take over all of the property and assets of this corporation, giving to this corporation $10,500,000 par value of the common capital stock of the Pierce Oil Corporation, $5,000,000 in cash in lawful money of the United States, and assuming all of the debts, liabilities and obligations of this corporation, and

"Whereas, the Board of Directors has been requested, authorized and directed in writing by stockholders of this company holding

more than four-fifths of its capital stock to make such sale and transfer upon such terms, and

"Whereas, the Board of Directors approve of such transfer upon such terms: Therefore Be It

"Resolved, that all of the real, personal, and mixed property, and chattels real, corporeal and incorporeal, of this corporation, including all of its lands, tenements, and hereditaments, of whatsoever name and nature, leases, mining claims, denouncements, prospects for oil and other mineral, easements, profits, covenants, warranties, licenses, permits, rights, and choses in action in respect of real property and chattels real, and each and every other right, title or interest which it may now have or hereafter acquire in respect of real property, corporeal or incorporeal, and all chattels real, wherever situated, together with all fixtures and articles or personal property used on or in connection with its said real property and
9 chattels real, and all of its chattels, goods, merchandise, machinery, tools, supplies, accounts, bills, notes, moneys, stocks, bonds, mortgages, credits, patents, [trade-markes] copyrights, trade names, good-will, rights and choses in action, and all and singular its other personal and mixed property, corporeal and incorporeal, of every kind, which this corporation now has or hereafter may acquire, the whole to be transferred as a going concern, in return for $10,500,000 of the common capital stock of the said Pierce Oil Corporation, $5,000,000 in cash in lawful money of the United States, and the assumption by said Pierce Oil Corporation of all of the debts, obligations and liabilities of this corporation:

"Resolved, that Clay Arthur Pierce, President; Andrew M. Finlay, Vice President; Thomas F. Lydon, Secretary, and the other officers of this corporation be and they hereby are respectively authorized and directed to do [*ann*] and all manner of things, and to make execute and deliver all and all manner of deeds, conveyances and other instruments as may be necessary, desirable or convenient to carry out the in'ent of these resolutions;

"Resolved, that Clay Arthur Pierce and Henry S. Priest be appointed agents and trustees of this corporation to receive for it the said $10,500,000 par value of the shares of the common capital stock of the Pierce Oil Corporation, the said $5,000,000 in cash, and any and all other things or instruments incident to the carrying out of the intent of these resolutions."

The meeting then adjourned until eleven o'clock A. M., Friday July 11th, 1913.

____ ____,
Vice-President.

____ ____,
Secretary.

Endorsed: "Filed Feb. 18, 1916, W. W. Nall, Clerk."

(*Separate Motion to Dismiss of Henry S. Priest and Clay A. Pierce, Trustees.*)

Now come Henry S. Priest and Clay Arthur Pierce, who are made defendants in the above entitled cause as Trustees and Agents for said Waters-Pierce Oil Company, by their solicitor, and file this, their separate motion to dismiss said cause, and for grounds therefor, state:

1. That the original petition in said cause does not state a cause of action or ground for recovery in equity against said defendants, or either of them.

10 2. That said original petition sets forth separate and distinct claims of different characters against the various defendants therein and is otherwise multifarious.

3. That there is a misjoinder of parties defendant in said original petition and cause, in that the claims or alleged causes of action do not affect all the defendants alike or in the same capacity.

4. That there is a misjoinder of claims or alleged causes of action in said original petition and cause, in that the causes of action against the various defendants are of a different nature and which are not cognizable in equity in the same action.

5. That it appears from the averments of said original petition, that defendants' liability or cause of action is asserted against the different defendants therein in this, that judgment is sought against the defendants, Henry S. Priest and Clay Arthur Pierce, for property and money of Waters-Pierce Oil Company alleged to be in their hands as liquidated agents of said company, while the judgment is sought to be obtained against the defendants Henry Clay Pierce, Pierce Investment Trust Company, and Clay Arthur Pierce, individually, as and for moneys of Waters-Pierce Oil Company alleged to have been paid to them respectively in liquidation and redemption of shares of stock held by them separately in said company.

6. That said original petition asserts a different cause of action against the different material defendants joined in the cause, without sufficient grounds being stated or appearing for so doing, contrary to the equity rules of this Court.

J. D. JOHNSON,
Solicitor.

Endorsed: "Filed Jun. 10, 1916, W. W. Nall, Clerk."

(*Separate Motion to Dismiss of Henry Clay Pierce and Pierce Investment Trust Co.*)

Now come Henry Clay Pierce and the Pierce Investment Trust Company, who are made defendants in the above entitled cause, as stockholders of said Waters Pierce Oil Company, by their solicitors,

and file this, their separate motion to dismiss said cause, and for grounds therefor, state:

1. That the original petition in said cause does not state a cause of action or ground for recovery in equity against said defendants, or either of them.

11 2. That said original petition sets forth separate and distinct claims of different characters against the various defendants therein and is otherwise multifarious.

3. That there is a misjoinder of parties defendant in said original petition and cause, in that the claims or alleged causes of action do not affect all the defendants alike or in the same capacity.

4. That there is a misjoinder of claims or alleged causes of action in said original petition and cause, in that the causes of action against the various defendants are of a different nature and which are not cognizable in equity in the same action.

5. That it appears from the averments of said original petition, that defendants' liability or cause *or* action is asserted against the different defendants therein in this, that judgment is sought against the defendant, Henry S. Priest and Clay Arthur Pierce, for property and money of Waters Pierce Oil Company alleged to be in their hands as liquidated agents of said Company, while the judgment is sought to be obtained against the defendants Henry Clay Pierce, Pierce Investment Trust Company, and Clay Arthur Pierce, individually, as and for moneys of Waters Pierce Oil Company alleged to have been paid to them respectively in liquidation and redemption of shares of stock held by them separately in said company.

6. That said original petition asserts a different cause of action against the different material defendants joined in the cause, without sufficient grounds being stated or appearing for so doing, contrary to the equity rules of this Court.

S. W. FORDYCE, JR.,
JOHN H. HOLLIDAY, &
THOS. W. WHITE,
Solicitors for Henry Clay Pierce and Pierce Investment Trust Company.

Endorsed: "Filed Jun. 10, 1916, W. W. Nall, Clerk."

(*Amended Motion to Dismiss of Henry Clay Pierce and Pierce Investment Trust Co.*)

Now come Henry Clay Pierce and the Pierce Investment Trust Company, who are made defendants in the above entitled cause, as stockholders of said Waters Pierce Oil Company, by their solicitors, and file this, their amended separate motion to dismiss said
12 cause, and for grounds therefor, state:

1. That the original petition in said cause does not state a cause of action or ground for recovery in equity against said defendant-, or either of them.

2. That said original petition sets forth separate and distinct claims of different characters against the various defendants therein and is otherwise multifarious.

3. That there is a misjoinder of parties defendant in said original petition and cause, in that the claims or alleged causes of action do not affect all the defendants alike or in the same capacity.

4. That there is a misjoinder of claims or alleged causes of action in said original petition and cause, in that the causes of action against the various defendants are of a different nature and which are not cognizable in equity in the same action.

5. That it appears from the averments of said original petition, that defendants' liability or cause of action is asserted against the different defendants therein in this that judgment is sought against the defendants, Henry S. Priest and Clay Arthur Pierce, for property and money of Waters Pierce Oil Company alleged to be in their hands, as liquidated agents of said Company, while the judgment is sought to be obtained against the defendants, Henry Clay Pierce, Pierce Investment Trust Company, and Clay Arthur Pierce, individually, as and for moneys of Waters Pierce Oil Company alleged to have been paid to them respectively in liquidation and redemption of shares of stock held by them separately in said Company.

6. That said original petition asserts a different cause of action against the different material defendants joined in the cause, without sufficient grounds being stated or appearing for so doing, contrary to the equity rules of this Court.

7. That it appears from the averments of the petition the action is for the recovery of a fine from these defendants, as and for the violation of a penal statute of the United States, and it therefore seeks to hold these defendants to answer for an infamous crime without a presentment or indictment of the Grand Jury,—contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

8. That it appears from the petition that the suit purports to be a proceeding in equity, while it also appears that the action is, in fact, for the recovery of a fine from these defendants for a violation
13 of a penal statute of the United States, and is, therefore, a criminal prosecution, and deprives these defendants of a trial therein by jury,—contrary to the provisions of the Sixth Amendment to the Constitution of the United States.

9. That according to the averments of the petition, the action is in the nature of a criminal proceeding against these defendants, and will compel them, by answering therein, to be wit-

nesses against themselves in a criminal case,—contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

10. That it appears from the averments of the petition, the rendering and enforcing of a judgment against these defendants for any part of the sum sued for in said cause would deprive them, and each of them, of their property without due process of law,—contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

S. W. FORDYCE, JR.,
JOHN H. HOLLIDAY, &
THOS. W. WHITE,
Solicitors for Henry Clay Pierce and Pierce Investment Trust Company.

Endorsed: "Filed Oct. 25, 1916, W. W. Nall, Clerk."

(*Amended Motion to Dismiss of H. S. Priest and C. A. Pierce.*)

Now at this day come Henry S. Priest and Clay Arthur Pierce, who are impleaded as defendants in the above entitled cause, by their solicitors, and by leave of court file this, their amended motion to dismiss said cause as against them; and for grounds therefor, state:

1. That the petition in said cause does not state facts sufficient to constitute a cause of action or ground for recovery in equity against said defendants or either of them.

2. That said petition sets forth separate and distinct claims or grounds of action of different character against the various defendants therein, and is otherwise multifarious.

3. That there is a misjoinder of parties defendant in said petition and suit, in that the claims or alleged causes of action do not affect all the defendants alike or in the same capacity.

14 4. That there is a misjoinder of claims or alleged causes of action in said petition and cause, in that the causes of action stated against the various defendants are of a different nature, and the same are not cognizable in equity in the same action.

5. That it appears from the petition, a different liability or cause of action is asserted against the different defendants therein, in this that judgment is sought to be obtained against the defendants, Henry S. Priest and Clay Arthur Pierce, jointly with the other defendants, as and for property and money of the Waters Pierce Oil Company alleged to be in the hands of these defendants as liquidating agents or trustees of said Company,—while judgment is also sought to be obtained against the defendants Henry Clay Pierce, Pierce Investment Trust Company and Clay Arthur Pierce, individually, and jointly with these defendants, as and for monies of said Waters

Pierce Oil Company alleged to have been paid to said other defendants, respectively, in liquidation and redemption of shares of stock held by them separately in said Company.

6. That the petition states and asserts a different cause of action against the different material defendants joined in the cause, without sufficient grounds being stated or appearing for so doing,—contrary to the equity rules of this court.

7. That it appears from the averments of the petition the action is for the recovery of a fine from these deefndants as and for the violation of a penal statute of the United States, and it therefore seeks to hold these defendants to answer for an infamous crime without a presentment or indictment of the Grand Jury,—contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

8. That it appears from the petition the suit purports to be a proceeding in equity; while it also appears that the action is, in fact, for the recovery of a fine from these defendants for a violation of a penal statute of the United States, and is therefore a criminal prosecution, and deprives these defendants of a trial therein by jury,—contrary to the provisions of the Sixth Amendment to the Constitution of the United States.

9. That according to the averments of the petition, the action is in the nature of a criminal proceeding against these defendants, and will compel them, by answering therein, to be witnesses against themselves in a criminal case,—contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

15 10. That it appears from the averments of the petition, the rendering and enforcing of a judgment against these defendants for any part of the sum sued for in said cause would deprive them and each of them, of their property without due process of law,—contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

11. That according to the averments of the petition, the United States accuses the various defendants of a conspiracy punishable by Section 37 of the Revised Penal Code of the United States (enacted March 4, 1909) and will compel them by answering therein to be witnesses against themselves in a criminal case—contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

HENRY S. PRIEST AND
CLAY ARTHUR PIERCE,
By J. D. JOHNSON AND
ALEXANDER B. SIEGEL,
Solicitors for said Defendants.

Plaintiff hereby acknowledges service of a copy of the foregoing amended motion to dismiss said cause, and consents to the filing of the same.

St. Louis, Missouri, October 27, 1916.

W. H. WOODWARD,
Ass't U. S. Att'y.

Endorsed: "Filed Oct. 27, 1916, W. W. Nall, Clerk."

(*Third Amended Motion to Dismiss of Henry Clay Pierce and Pierce Investment Trust Co.*)

Now come Henry Clay Pierce and the Pierce Investment Trust Company, who are made defendants in the above entitled cause, as stockholders of said Waters Pierce Oil Company, by their solicitors, and file this, their third amended separate motion to dismiss said cause, and for grounds therefor, state:

1. That the original petition in said cause does not state a cause of action or [ground] for recovery in equity against said defendants, or either of them.

2. That said original petition sets forth separate and distinct claims of different characters against the various defendants therein and is otherwise multifarious.

3. That there is a misjoinder of parties defendant in said original petition and cause, in that the claims or alleged causes of
16 action do not affect all the defendants alike or in the same capacity.

4. That there is a misjoinder of claims or alleged causes of action in said original petition and cause, in that the causes of action against the various defendants are of a different nature and which are not cognizable in equity in the same action.

5. That it appears from the averments of said original petition, that defendants' liability or cause of action is asserted against the different defendants therein in this, that judgment is sought against the defendants, Henry S. Priest and Clay Arthur Pierce, for property and money of Waters Pierce Oil Company alleged to be in their hands as liquidated agents of said company, while the judgment is sought to be obtained against the defendants, Henry Clay Pierce, Pierce Investment Trust Company, and Clay Arthur Pierce individually, as and for moneys of Waters Pierce Oil Company alleged to have been paid to them respectively in liquidation and redemption of shares of stock held by them separately in said company.

6. That said original petition asserts a different cause of action against the different material defendants joined in the cause, without sufficient grounds being stated or appearing for so doing, contrary to the equity rules of this Court.

7. That it appears from the averments of the petition the action is for the recovery of a fine from these defendants, as and for the violation of a penal statute of the United States, and it therefore seeks to hold these defendants to answer for an infamous crime without a presentment or indictment of the Grand Jury,—contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

8. That it appears from the petition that the suit purports to be a proceeding in equity, while it also appears that the action is, in fact, for the recovery of a fine from these defendants for a violation of a penal statute of the United States, and is, therefore, a criminal prosecution, and deprives these defendants of a trial therein by jury,—contrary to the provisions of the Sixth Amendment to the Constitution of the United States.

9. That according to the averments of the petition, the action is in the nature of a criminal proceeding against these defendants, and will compel them, by answering therein, to be witnesses against themselves in a criminal case,—contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

17 10. That it appears from the averments of the petition, the rendering and enforcing of a judgment against these defendants for any part of the sum sued for in said cause would deprive them, and each of them, of their property without due process of law,—contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

11. That according to the averments of the petition, the United States accuses the various defendants of a conspiracy punishable by Section 37 of the Revised Penal Code of the United States (enacted March 4, 1909) and will compel them by answering therein to be witnesses against themselves in a criminal case—contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

S. W. FORDYCE, Jr.,
J. H. HOLLIDAY &
THOS. W. WHITE,
Solicitors for Henry Clay Pierce and Pierce Investment Trust Company.

Service acknowledged.
10/31/16.

W. H. WOODWARD.

Endorsed: "Filed Oct. 31, 1916, W. W. Nall, Clerk."

(*Order of Submission of Motions to Dismiss, March* 1, 1917.)

Now at this day come the parties hereto by their respective solicitors and argue and submit to the Court the motions of defendants to dismiss in this cause.

(March 1st, 1917, David P. Dyer, Judge.)

(*Order of Submission of Motions to Dismiss Vacated, etc.*)

March 23, 1917.

On motion of said complainant, the Court doth

Order that the entry of submission of the motions to dismiss in this cause, be vacated, and that the said complainant be granted Twenty days from this date to file an amended bill herein.

(March 23rd, 1917, David P. Dyer, Judge.)

18 (*Amended Bill of Complaint.*)

To the Honorable the Judges of the District Court of the United States for the Eastern District of Missouri, sitting in Equity:

First Count.

The United States of America, by Arthur L. Oliver, United States Attorney for the Eastern District of Missouri, and Robert A. Hunter, Special Assistant to the Attorney General, bring this amended bill in equity against the Waters Pierce Oil Company, Henry S. Priest, Clay Arthur Pierce, Henry Clay Pierce, and Pierce Investment Trust Company, for the purpose of collecting a judgment obtained by the United States in the District Court of the United States for the Western District of Louisiana, which said judgment bears date of March 10, 1914, and is for the sum of Fourteen Thousand ($14,000.00) Dollars and costs, and, upon information and belief, plaintiff alleges and shows:

I.

That the Waters Pierce Oil Company is, and at all times herein mentioned was, a corporation duly organized, existing and doing business under and by virtue of the laws of Missouri, with its principal place of business at the City of Saint Louis, Missouri; That Pierce Investment Trust Company is, and at all times herein mentioned was, a corporation organized, existing and doing business under and by virtue of the laws of Missouri, with its principal place of business at Saint Louis, Missouri; and that Henry S. Priest, Clay Arthur Pierce, and Henry Clay Pierce, are all citizens of the State of Missouri and reside within the Eastern Division of the Eastern District of Missouri within the jurisdiction of this court.

II.

Plaintiff alleges that on January 29, 1907, at the January Term of the District Court of the United States for the Western District of Louisiana, held at the City of Alexandria, in said State, an indict-

ment was returned and filed against the Waters Pierce Oil Company, which said indictment was assigned number 1626 on the docket of said court, and charged the said defendant, Waters Pierce Oil Company, with receiving certain rebates and concessions in violation of the Elkins Act of February 19, 1903 (32 Stat. 847); that thereafter the said case, proceeding to trial on March 20, 1914, the jury returned a verdict of guilty upon which the court entered a judgment in favor of plaintiff, the United States of America,

19 for the sum of Fourteen Thousand ($14,000.00) — and costs; that thereafter, to wit, on April 21, 1914, the said Waters Pierce Oil Company was allowed a writ of error, without supersedeas, to the United States Circuit Court of Appeals for the Fifth Circuit, and, upon hearing duly had, the said Court of Appeals affirmed the judgment of the District Court, and the mandate of said Court of Appeals affirming said judgment was filed in the District Court aforesaid on June 23, 1915; that thereafter an execution upon said judgment was issued out of said District Court for the Western District of Louisiana, upon which said execution the United States Marshal for said Western District of Louisiana, on August 2, 1915, made a nulla bona return.

Plaintiff states that when the said Waters Pierce Oil Company was allowed a writ of error, as aforesaid, it furnished bond, with the American Surety Company of New York, as surety, for the costs of said prosecution; that after the said execution was returned nulla bona, as aforesaid, plaintiff sued out a rule against the said Waters Pierce Oil Company and the American Surety Company of New York to tax said costs and for judgment therefor against said surety, which said rule, after hearing in the United States District Court for the Western District of Louisiana was made absolute, and judgment was entered against the American Surety Company of New York for said costs; that the said surety company was allowed a writ of error to the United States Circuit Court of Appeals for the Fifth Circuit from said judgment, which said Court of Appeals affirmed the judgment of the District Court, and that after said litigation, and since the filing of the original bill herein, the said costs have been paid.

Plaintiff states that the judgment against the said Waters Pierce Oil Company for the sum of Fourteen Thousand ($14,000.00) Dollars, as above set forth, is final and has not been paid by the said Waters Pierce Oil Company, or any one for it either in whole or in part, said company having failed and refused, and still failing and refusing to pay said judgment or any part thereof.

Plaintiff further states that payment of the principal of said judgment was not, and is not, secured by bond, or in any other manner.

III.

Plaintiff further alleges that at an adjourned regular meeting of the Board of Directors of the Waters Pierce Oil Company held on July 9, 1913, at Number 420 Olive Street, in the City of Saint

Louis, Missouri, the said Board of Directors, pursuant to a request of holders of more than four-fifths of the capital stock of said corporation, did authorize the sale of all of the property of said corporation to the Pierce Oil corporation, a corporation organized under the laws of the State of Virginia, for and in consideration of Ten Million Five Hundred Thousand Dollars of the common capital stock of said Pierce Oil Corporation, and Five Million Dollars in cash of the lawful money of the United States; that Clay Arthur Pierce and Henry S. Priest were, by the said Board of Directors, appointed agents and trustees of the Waters Pierce Oil Company to receive from the Pierce Oil Corporation the consideration aforesaid. A copy of the minutes of the said meeting of the Board of Directors of the Waters Pierce Oil Company is hereunto annexed, marked Exhibit A, and made a part of this bill.

IV.

Plaintiff further alleges that pursuant to the authority granted them by the Board of Directors, as alleged in paragraph numbered III, Clay Arthur Pierce and T. F. Lyden, President and Secretary respectively of the Waters Pierce Oil Company, and acting for said Company, did, by an indenture dated July 7, 1913, and by other indentures, deeds and assignments, the date and character of which are to plaintiff unknown, convey to Pierce Oil Corporation all of its property and assets.

V.

Plaintiff avers that, pursuant to the authority granted them by the Board of Directors of the Waters Pierce Oil Company, as alleged in paragraph III, Henry S. Priest and Clay Arthur Pierce, as trustees and agents for said Waters Pierce Oil Company, did receive from the Pierce Oil Corporation Ten Million Five Hundred Thousand Dollars, par value, of the common stock of said Pierce Oil Corporation, and Five Million Dollars in cash, which said stock and money represented and was received by them in return for the total assets and property of the Waters Pierce Oil Company.

VI.

Plaintiff further avers that said Henry S. Priest and Clay Arthur Pierce now hold, as trustees for the said Waters Pierce Oil Company, certain moneys and certain stock of the Pierce Oil Corporation, the exact amount of either being to your petitioner unknown.

21 VII.

Plaintiff further avers that at the time of the transfer of its property and assets by the Waters Pierce Oil Company to the Pierce Oil Corporation, Henry Clay Pierce was the owner of two thousand,

seven hundred and twenty-seven shares of the common stock of the Waters Pierce Oil Company; and that the Pierce Investment Trust Company was the owner of one thousand shares of the common stock of the Waters Pierce Oil Company; and that Clay Arthur Pierce was the owner of one share of the common stock of the Waters Pierce Oil Company; and that they, and each of them, have received from Clay Arthur Pierce and Henry S. Priest certain proportions of the money and stock held by the said Henry S. Priest and Clay Arthur Pierce as trustees for the Waters Pierce Oil Company, as alleged in paragraph V.

Plaintiff states that it is informed and believes that Henry Clay Pierce received the sum of Three Million, Four Hundred and Eight Thousand, Seven Hundred and Fifty Dollars; and that Pierce Investment Trust Company received the sum of One Million, Two Hundred and Fifty Thousand Dollars; and that Clay Arthur Pierce received the sum of One Thousand, Two Hundred and Fifty Dollars, from the said Henry S. Priest and Clay Arthur Pierce, trustees as aforesaid.

VIII.

Plaintiff states that the exact amount of moneys and stock now held by the said Henry S. Priest and Clay Arthur Pierce, in their capacity as trustees for the Waters Pierce Oil Company, and the exact sums received from said trustees by the said Henry Clay Pierce, Pierce Investment Trust Company and Clay Arthur Pierce, as hereinabove alleged, are well known to the said defendants, and are unknown to plaintiff, except as hereinabove set forth on information and belief, and, therefore, a full discovery from said defendants is herein sought.

IX.

Plaintiff further avèrs that on March 19, 1917, execution upon the judgment of plaintiff set out in paragraph II, was issued out of the United States District Court for the Western District of Louisiana directed to the United States Marshal for the Eastern District of Missouri, and that thereafter, to-wit, on March 28, 1917, said Marshal made a nulla bona return on said execution and filed the said writ and return in the office of the Clerk of the United States District Court for the Western District of Louisiana on March 31, 1917.

22 X.

Plaintiff further avers that the Waters Pierce Oil Company has no assets out of which a judgment could be collected; that the said transfer to the Pierce Oil Corporation was of all of its assets and property, and left it, the said Waters Pierce Oil Company, without any means or power to meet its outstanding obligations, including said judgment due to plaintiff, and that said Company ceased to do business on said transfer and is no longer a going concern.

Plaintiff states that in equity and good conscience the money received from the sale of the assets of the Waters Pierce Oil Company and now in the hands of its stockholders, agents and trustees, as herein alleged, ought to be subjected to the payment of the judgment of your plaintiff set out in paragraph II.

XI.

In consideration whereof and forasmuch as plaintiff is without a plain, adequate and complete remedy in the premises save in a court of equity, plaintiff prays:

1. That writs of subpœna issue directed to defendants, Waters Pierce Oil Company, Henry S. Priest, Clay Arthur Pierce, Henry Clay Pierce, and Pierce Investment Trust Company, commanding each of them to appear herein and answer the allegations contained in the foregoing bill of complaint, and abide by and perform such orders and decrees as the court may make in the premises.

2. That the court adjudge and decree that the Waters Pierce Oil Company has no assets subject to execution out of which plaintiff's judgment may be collected.

3. That an accounting may be had by said defendants, Henry S. Priest and Clay Arthur Pierce, of all stock and moneys received by them in their capacity as trustees of the Waters Pierce Oil Company, and of the disposition thereof, as well as of all stock and moneys now held by them as trustees aforesaid, and that the said Henry Clay Pierce, Clay Arthur Pierce and the Pierce Investment Trust Company be required to make an accounting of all stock and moneys received by them as stockholders of the Waters Pierce Oil Company from the said trustees.

4. That the court adjudge and decree that the money and property received from the Pierce Oil Corporation and in the hands of Clay Arthur Pierce and Henry S. Priest is held in trust by them for the benefit of the Waters Pierce Oil Company and should
23 be subjected to the payment of the debts and liabilities of the Waters Pierce Oil Company, and more particularly the judgment of plaintiff.

5. That during the pendency of this suit the defendants, Henry S. Priest and Clay Arthur Pierce, be restrained from conveying or assigning any money or property held by them as trustees or agents of the Waters Pierce Oil Company.

6. That the court adjudge and decree that Henry Clay Pierce, Pierce Investment Trust Company and Clay Arthur Pierce received moneys and property derived from the sale of the assets of the Waters Pierce Oil Company, and that the same be subjected to the payment of the debts and liabilities of the Waters Pierce Oil Company, and, more particularly, the judgment of plaintiff.

7. That plaintiff have judgment against defendants for the sum of Fourteen Thousand ($14,000.00) Dollars, being the amount of the judgment referred to in paragraph II of this bill.

8. For such other orders and decrees, the premises considered, as may be in equity meet and proper.

ARTHUR L. OLIVER,
United States Attorney.
ROBERT A. HUNTER,
Special Assistant to the Attorney General.
W. H. WOODWARD,
Assistant United States Attorney.

UNITED STATES OF AMERICA,
Western District of Louisiana, ss:

Before me, the undersigned authority, personally appeared Robert A. Hunter, who, being by me first duly sworn, deposes and says that he is a Special Assistant to the Attorney General of the United States, and that he brings this amended bill of complaint for and on behalf of the United States of America; that he has read the foregoing amended bill of complaint and knows the contents thereof and that the same is true, of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

ROBERT A. HUNTER.

24 Sworn to and subscribed before me this 17th day of August, 1917.

[SEAL.]

W. B. LEE,
Clerk United States District Court,
Western District of Louisiana.

(*Order Allowing Amended Bill of Complaint to be Filed, etc.*)

The foregoing amended bill of complaint being considered, it is ordered that the same be filed, and that a copy, issued and certified under the hand and seal of the Clerk of this Court, of the said amended bill of complaint, be served, together with a subpœna in chancery, on each of the said defendants.

Thus done and signed this 22 day of August, 1917.

(Signed)

DAVID P. DYER,
Judge United States District Court,
Eastern District of Missouri.

Endorsed: "Filed Aug. 23, 1917, W. W. Nall, Clerk."

(Separate Motion to Dismiss of Henry Clay Pierce and Pierce Investment Trust Co.)

Now come Henry Clay Pierce and the Pierce Investment Trust Company, who are made defendants in the above entitled cause, as stockholders of said Waters Pierce Oil Company, by their solicitors, and file this, their separate motion to dismiss said cause, and for grounds therefor, state

1. That the first amended petition in said cause does not state a cause of action or ground for recovery in equity against said defendants, or either of them.

2. That said petition sets forth separate and [distince] claims of different characters against the various defendants therein and is otherwise multifarious.

3. That there is a misjoinder of parties defendant in said petition and cause, in that the claims or alleged causes of action do not affect all the defendants alike or in the same capacity.

4. That there is a misjoinder of claims or alleged causes of action in said petition and cause, in that the causes of action against the various defendants are of different nature and which are not cognizable in equity in the same action.

5. That it appears from the averments of said petition, that defendants' liability or cause of action is asserted against the different defendants therein in this, that judgment is sought against the defendants, Henry S. Priest and Clay Arthur Pierce, for property and money of Waters Pierce Oil Company alleged to be in their hands as liquidated agents of said Company, while the judgment is sought to be obtained against the defendants, Henry Clay Pierce, Pierce Investment Trust Company, and Clay Arthur Pierce, individually, as and for moneys of Waters Pierce Oil Company alleged to have been paid to them respectively in liquidation and redemption of shares of stock held by them separately in said Company.

6. That said petition asserts a different cause of action against the different material defendants joined in the cause, without sufficient grounds being stated or appearing for so doing, contrary to the equity rules of this Court.

7. That it appears from the averments of said petition the action is for the recovery of a fine from these defendants, as and for the violation of a penal statute of the United States, and it therefore seeks to hold these defendants to answer for an infamous crime without a presentment or indictment of the Grand Jury,—contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

8. That it appears from said petition that the suit purports to be a proceeding in equity, while it also appears that the action is, in

fact, for the recovery of a fine from these defendants for a violation of a penal statute of the United States, and is, therefore, a criminal prosecution, and deprives these defendants of a trial therein by jury,—contrary to the provisions of the Sixth Amendment to the Constitution of the United States.

9. That according to the averments of said petition, the action is in the nature of a criminal proceeding against these defendants, and will compel them, by answering therein, to be witnesses against themselves in a criminal case,—contrary to the provisions of the Fifth Amendment of the Constitution of the United States.

10. That it appears from the averments of said petition the rendering and enforcing of a judgment against these defendants for any part of the sum sued for in said cause would deprive
26 them, and each of them, of their property without due process of law,—contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

11. That according to the averments of said petition, the United States accuses the various defendants of a conspiracy punishable by section 37 of the Revised Penal Code of the United States (enacted March 4, 1909) and will compel them by answering therein to be witnesses against themselves in a criminal case—contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

S. W. FORDYCE, JR.,
J. H. HOLLIDAY, &
THOS. W. WHITE,
Solicitors for Henry Clay Pierce and Pierce Investment Trust Company.

Endorsed: "Filed Sep. 24, 1917, W. W. Nall, Clerk."

(Separate Motion to Dismiss of Henry S. Priest and Clay A. Pierce.)

Now come Henry S. Priest and Clay Arthur Pierce, defendants in the above entitled cause, and file this their separate motion to dismiss said cause, and for grounds therefor, state:

1. That the first amended petition in said cause does not state a cause of action or ground for recovery in equity against said defendants, or either of them.

2. That said petition sets forth separate and distinct claims of different characters against the various defendants therein and is otherwise multifarious.

3. That there is a [misjoin-er] of parties defendant in said petition and cause, in that the claims or alleged causes of action do not affect all the defendants alike or in the same capacity.

4. That there is a misjoinder of claims or alleged causes of action in said petition and cause, in that the causes of action against the

various defendants are of different nature and which are not cognizable in equity in the same action.

5. That it appears from the averments of said petition, that defendants' liability or cause of action is asserted against the different defendants therein in this, that judgment is sought against the defendants, Henry S. Priest and Clay Arthur Pierce, for property and money of Waters Pierce Oil Company alleged to be in their
27 hands as liquidated agents of said Company, while the judgment is sought to be obtained against the defendants, Henry Clay Pierce, Pierce Investment Trust Company, and Clay Arthur Pierce, individually, as and for moneys of Waters Pierce Oil Company alleged to have been paid to them respectively in liquidation and redemption of shares of stock held by them separately in said Company.

6. That said petition asserts a different cause of action against the different material defendants joined in the cause, without sufficient grounds being stated or appearing for so doing, contrary to the equity rules of this Court.

7. That it appears from the averments of said petition the action is for the recovery of a fine from these defendants, as and for the violation of a penal statute of the United States, and it therefore seeks to hold these defendants to answer for an infamous crime without a presentment or indictment of the Grand Jury, contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

8. That it appears from said petition that the suit purports to be a proceeding in equity, while it also appears that the action is, in fact, for the recovery of a fine from these defendants for a violation of a penal statute of the United States, and is, therefore, a criminal prosecution, and deprives these defendants of a trial therein by a jury, contrary to the provisions of the Sixth Amendment to the Constitution of the United States.

9. That according to the averments of said petition, the action is in the nature of a criminal proceeding against these defendants, and will compel them by answering therein, to be witnesses against themselves in a criminal case, contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

10. That it appears from the averments of said petition, the rendering and enforcing of a judgment against these defendants for any part of the sum sued for in said cause would deprive them, and each of them, of their property without due process of law, contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

11. That according to the averments of said petition, the United States accuses the various defendants of a conspiracy punishable by section 37 of the Revised Penal Code of the United States (enacted

March 4, 1909) and will compel them by answering therein
28 to be witnesses against themselves in a criminal case, contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

VAN VORST, MARSHALL & SMITH,
BOYLE & PRIEST,
Solicitors for Henry S. Priest and Clay Arthur Pierce.

Endorsed: "Filed Sep. 26, 1917, W. W. Nall, Clerk."

(*Order of Submission of Motions to Dismiss, October* 17, 1917.)

Now at this day come the parties hereto by their respective solicitors, and argue and submit to the Court the joint motion to dismiss filed by the defendants, Henry S. Priest and Clay Arthur Pierce, and the joint motion to dismiss filed by the defendants, Henry Clay Pierce and the Pierce Investment Trust Company.
(October 17th, 1917, David P. Dyer, Judge.)

(*Order Overruling Motions to Dismiss.*)

Upon consideration of the Motion to dismiss of Henry S. Priest and Clay Arthur Pierce, and the Motion to dismiss of Henry Clay Pierce and the Pierce Investment Trust Company, heretofore filed and submitted to the Court, the Court doth
Order that said motions to dismiss be and the same are hereby overruled.

(Signed) DAVID P. DYER,
Judge.

St. Louis, Missouri, November thirteenth, 1917.

Endorsed: "Filed Nov. 13, 1917, W. W. Nall, Clerk."

Separate Answer of Henry Clay Pierce and Pierce Investment Trust Company.

Now come Henry Clay Pierce and Pierce Investment Trust Company and file their separate answer to the first amended bill of plaintiff in the above entitled cause.

I.

Said defendants admit the incorporation of the Waters
29 Pierce Oil Company and the Pierce Investment Trust Company, as alleged in the first paragraph of said first amended bill, but deny the other allegations in said paragraph one.

II.

Said defendants deny the allegations set forth in paragraph two of said amended bill.

III.

Said defendants deny the allegations set forth in paragraph three of said amended bill.

IV.

Said defendants deny the allegations set forth in paragraph four of said amended bill.

V.

Said defendants deny the allegations set forth in paragraph five of said amended bill.

VI.

Said defendants deny the allegations set forth in paragraph three of said amended bill.

VII.

Said defendants deny the allegations set forth in paragraph seven of said amended bill.

VIII.

Said defendants deny the allegations set forth in paragraph eight of said amended bill.

IX.

Said defendants deny the allegations set forth in paragraph nine of said amended bill.

X.

Said defendants deny the allegations set forth in paragraph ten of said amended bill.

XI.

Said defendants deny the allegations set forth in paragraph eleven of said amended bill.

XII.

Said defendants, for further answer, state that the first amended bill in said cause does not state a cause of action or ground for recovery in equity against said defendants, or either of them.

30

XIII.

Said defendants for further answer, state that said amended bill sets forth separate and distinct claims of different characters against the various defendants therein and is otherwise multifarious.

XIV.

Said defendants, for further answer, state that there is a misjoinder of parties defendant in said amended bill and cause, in that the claims or alleged causes of action do not affect all the defendants alike or in the same capacity.

XV.

Said defendants, for further answer, state that there is a misjoinder of claims or alleged causes of action in said amended bill and cause, in that the causes of action against the various defendants are of different nature and which are not cognizable in equity in the same action.

XVI.

Said defendants, for further answer, state that it appears from the averments of said amended bill that defendants' liability or cause of action is asserted against the different defendants therein, in this: that judgments is sought against the defendants, Henry S. Priest and Clay Arthur Pierce for property and money of Waters Pierce Oil Company, alleged to be in their hands as liquidated agents of said company, while the judgment is sought to be obtained against the defendants, Henry Clay Pierce, Pierce Investment Trust Company, and Clay Arthur Pierce, individually, as and for moneys of Waters Pierce Oil Company, alleged to have been paid to them respectively in liquidation and redemption of shares of stock held by them separately in said company.

XVII.

Said defendants, for further answer, state that said amended bill asserts a different cause of action against the different material defendants joined in the cause, without sufficient grounds being stated or appearing for so doing, contrary to the Equity Rules of this Court.

XVIII.

Said defendants, for further answer, state that it appears from the averments of said amended bill the action is for the recovery of a fine from these defendants, as and for the violation of a penal statute of the United States and it therefore seeks to hold these
31 defendants to answer for an infamous crime without a presentment or indictment of the Grand Jury, contrary to the

provisions of the Fifth Amendment to the Constitution of the United States.

XIX.

Said defendants, for further answer, state that it appears from said amended bill that the suit purports to be a proceeding in equity, while it also appears that the action is, in fact, for the recovery of a fine from these defendants for the violation of a penal statute of the United States and is, therefore, a criminal prosecution, and deprives these defendants of a trial therein by jury, contrary to the provisions of the Sixth Amendment to the Constitution of the United States.

XX.

Said defendants, for further answer, state that according to the averments of said amended bill, the action is in the nature of a criminal proceeding against these defendants, and will compel them, by answering therein, to be witnesses against themselves in a criminal case, contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

XXI.

Said defendants, for further answer, state that it appears from the averments of said amended bill the rendering and enforcing of a judgment against these defendants for any part of the sum sued for in said cause would deprive them, and each of them, of their property without due process of law, contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

XXII.

Said defendants, for further answer, state that according to the averments of said amended bill, the United States accuses the various defendants of a conspiracy punishable by section 37 of the Revised Penal Code of the United States (enacted March 4, 1909) and will compel them by answering therein to be witnesses against themselves in a criminal case—contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

XXIII.

Said defendants, for further answer, state that all of the stockholders of said Waters Pierce Oil Company are necessary and proper parties to this proceeding, that this cause should not proceed
32 without said stockholders be brought in as such parties, and that proceeding without them would be inequitable and unjust to the present defendants and would result in a multiplicity of suits.

XXIV.

Said defendant-, for further answer, states that the United States of America, brought suit on January 4th 1916 in the District Court of the United States for the Western District of Louisiana against the Pierce Oil Corporation in a suit styled United States of America, Plaintiff vs. Waters Pierce Oil Company, in equity 1080; that in said suit, the plaintiff seeks to recover against the Pierce Oil Corporation, a corporation of the State of Virginia, the judgment entered against the Waters Pierce Oil Company on March 20th 1914, being the identical judgment referred to in the first amended bill of the plaintiff in the present case; that in said suit in the District Court of the United States for the Western District of Louisiana, it is alleged that the Pierce Oil Corporation had taken over the property and assets of the Waters Pierce Oil Company and in consideration of the transfer of said property and assets of the Waters Pierce Oil Company to the Pierce Oil Corporation, the Pierce Oil Corporation gave the Waters Pierce Oil Company Ten Million Five Hundred Thousand Dollars ($10,500,000) in par value of capital stock of the Pierce Oil Corporation and Five Million Dollars ($5,000,000) in cash and assumed all debts, liabilities and obligations of said Waters Pierce Oil Company; that on account of said transfer of property and assets and on account of said assumption by the Pierce Oil Corporation of debts, liabilities and obligations of the Waters Pierce Oil Corporation, the United States in said District Court of the Western District of Louisiana, is seeking to hold the Pierce Oil Corporation for the payment of said judgment, and said suit is still pending undetermined.

Said defendant- further states that on account of the matters and things aforesaid, the United States of America is forever barred from proceeding with the present case; that said matters constitute an election of remedies, a waiver, and an estoppel; and that the plaintiff in the present case has an adequate remedy at law and hence there is no equity in the first amended bill filed herein.

33 Wherefore, having fully answered, said defendants pray to be dismissed with their proper costs.

S. W. FORDYCE, Jr.,
J. H. HOLLIDAY &
THOS. W. WHITE,
Solicitors for Defendants, Henry Clay Pierce and Pierce Investment Trust Company.

1/30/18.

Plaintiff consents to filing of above answer out of time.

W. H. WOODWARD,
Ass't U. S. Att'y for Plaintiff.

Endorsed: "Filed Jan. 30, 1918, W. W. Nall, Clerk."

(Order of Submission of Cause on Stipulation and Agreed Statement of Facts.)

Now at this day come the parties hereto by their respective solicitors and submit this cause to the Court upon the stipulation and agreed statement of facts now filed herein.

(March 9th, 1918, David P. Dyer, Judge.)

(Stipulation and Agreed Statement of Facts.)

Filed in the U. S. District Court March 9, 1918.

It is agreed and understood, by and between Counsel for plaintiff, and Counsel for defendants, that the following facts are true, and the said cause shall be tried upon said facts, and no testimony shall be offered by either party.

I.

That the Waters Pierce Oil Company is, and at all times herein mentioned, was a corporation duly organized, existing and doing business under and by virtue of the laws of Missouri, with its principal place of business at the City of Saint Louis, Missouri; that Pierce Investment Trust Company is, and at all times herein mentioned, was a corporation organized, existing and doing business under and by virtue of the laws of Missouri, with its principal place of business at Saint Louis, Missouri; and that Henry S. Priest, Clay Arthur Pierce and Henry Clay Pierce, were at the time of filing and
34 service of this suit, citizens of the State of Missouri, and resided within the Eastern Division of the Eastern District of Missouri, and within the jurisdiction of this Court.

II.

It is admitted that on January 29th, 1907, at the January Term of the District Court of the United States for the Western District of Louisiana, held at the City of Alexandria, in said State, an indictment was returned and filed against the Waters Pierce Oil Company, which said indictment was assigned number 1626 on the docket of said Court, and charged the said defendant, Waters Pierce Oil Company, with receiving certain rebates and concessions in violation of the Elkins Act of February 19, 1903, (32 Stat. 847); that thereafter, the said case proceeding to trial on March 20, 1914, the jury returned a verdict of guilty upon which the Court entered a judgment in favor of plaintiff, the United States of America, for the sum of Fourteen thousand dollars ($14,000.00) and costs; that thereafter, to-wit, on April 21, 1914, the said Waters Pierce Oil Company was allowed a writ of error, without supersedeas, to the United States Circuit Court of Appeals for the Fifth Circuit, and, upon hearing duly had, the said Court of Appeals affirmed the judg-

ment of the District Court, and the mandate of said Court of Appeals affirming said judgment was filed in the District Court aforesaid, on June 23, 1915; that thereafter, an execution upon said judgment was issued out of said District Court for the Western District of Louisiana, upon which said execution the United States Marshal for said Western District of Louisiana, on August 2, 1915, made a nulla bona return.

It is admitted that when the said Waters Pierce Oil Company was allowed a writ of error, as aforesaid, it furnished bond, with the American Surety Company of New York, as surety, for the costs of said prosecution; that after the said execution was returned nulla bona, as aforesaid, plaintiff sued out a rule against said Waters Pierce Oil Company and the American Surety Company of New York to tax said costs and for judgment therefor against said surety, which said rule, after hearing in the United States District Court for the Western District of Louisiana was made absolute, and judgment was entered against the American Surety Company of New York for said costs; that the said Surety Company was allowed a writ of error to the United States Circuit Court of Appeals for the Fifth Circuit from said judgment, which said Court of Appeals
35 affirmed the judgment of the District Court, and that after said litigation, and since the filing of the original bill herein, the said costs have been paid.

It is further admitted that the judgment against the said Waters Pierce Oil Company for the sum of Fourteen Thousand Dollars ($14,000.00) as above set forth, is final, and has not been paid by the said Waters Pierce Oil Company, or any one for it, either in whole or in part, said company having failed and refused, and still failing and refusing to pay said judgment or any part thereof.

It is further admitted that payment of the principal of said judgment was not, and is not, secured by any bond whatever.

III.

It is admitted that at an adjourned regular meeting of the Board of Directors of the Waters Pierce Oil Company, held on July 9, 1913, at Number 420 Olive Street, in the City of Saint Louis, Missouri, the said Board of Directors, pursuant to a request of holders of more than four-fifths of the capital stock of said corporation, did authorize the sale of all the property of said corporation to the Pierce Oil Corporation, a corporation organized under the laws of the State of Virginia, for and in consideration of Ten Million, Five Hundred Thousand Dollars ($10,500,000.00), of the common capital stock of said Pierce Oil Corporation, and Five Million Dollars ($5,000,000.00) in cash of the lawful money of the United States; that Clay Arthur Pierce and Henry S. Priest were, by the said Board of Directors, appointed Agents and Trustees of the Waters Pierce Oil Company, to receive from the Pierce Oil Corporation, the consideration aforesaid. A copy of the minutes of the said meeting of the Board of Directors of the Waters Pierce Oil Company, is

hereunto annexed, marked Exhibit A, and made a part of this stipulation of facts.

IV.

It is further admitted that pursuant to the authority granted them by the Board of Directors, as set forth in paragraph numbered III, Clay Arthur Pierce and T. F. Lyden, President and Secretary, respectively, of the Waters Pierce Oil Company, and acting for said Company did, by an indenture dated July 7, 1913, and by other indentures, deeds and assignments, convey to Pierce Oil Corporation, all of its property and assets.

V.

It is further admitted that pursuant to the authority granted them by the Board of Directors of the Waters Pierce
36 Oil Company, as set forth in paragraph III, Henry S. Priest and Clay Arthur Pierce, as Trustees and Agents for said Waters Pierce Oil Company, did receive from the Pierce Oil Corporation, Ten Million, Five Hundred Thousand Dollars ($10,500,000.00), par value, of the common stock of said Pierce Oil Corporation, and Five Million Dollars ($5,000,000.00) in cash, which said stock and money represented, and was received by them, in return for the total assets and property of the Waters Pierce Oil Company.

VI.

It is admitted that at the time of the transfer of its property and assets by the Waters Pierce Oil Company, to the Pierce Oil Corporation, Henry Clay Pierce was the owner of Two Thousand, Seven Hundred and Twenty-seven (2,727) shares of the common stock of the Waters Pierce Oil Company; that the Pierce Investment Trust Company was the owner of One Thousand (1,000) shares of the common stock of the Waters Pierce Oil Company, and that Clay Arthur Pierce was the owner of one (1) share of the common stock of the Waters Pierce Oil Company, the total number of shares of stock issued by said Company, and outstanding, being Four Thousand (4,000), and that they and each of them received from Clay Arthur Pierce and Henry S. Priest, certain proportions of the money and stock held by the said Henry S. Priest and Clay Arthur Pierce, as Trustee for the Waters Pierce Oil Company, which said amounts so received by them, were as follows, to-wit:

Henry Clay Pierce received the sum of Three Million, Four Hundred and Eight Thousand, Seven Hundred and Fifty Dollars ($3,408,750.00); and that Pierce Investment Trust Company received the sum of One Million, Two Hundred and Fifty Thousand Dollars ($1,250,000.00); and that Clay Arthur Pierce received the sum of One Thousand, Two Hundred and Fifty Dollars ($1,250.00), from the said Henry S. Priest and Clay Arthur Pierce, Trustees as

aforesaid, and likewise received stock of the Pierce Oil Corporation, in the amounts set opposite their names as follows:

	Number of shares.	Value.
Henry Clay Pierce	71,583¾	$7,158,375.00
Pierce Investment Trust Company	26,250	2,625,000.00.
Clay Arthur Pierce	26¼	2,625.00

37

VII.

It is admitted that on March 19, 1917, execution upon the judgment of plaintiff set out in paragraph II, of this stipulation of facts, was issued out of the United States District Court for the Western District of Louisiana, directed to the United States Marshal for the Eastern District of Missouri, and that thereafter, to-wit, on March 28, 1917, said Marshal made a nulla bona return on said execution and filed the said writ and return in the office of the Clerk of the United States District Court for the Western District of Louisiana, on March 31, 1917.

VIII.

It is admitted that the Waters Pierce Oil Company has no assets out of which a judgment could be collected; that the said transfer to the Pierce Oil Corporation was of all of its assets and property, and left it, the said Waters Pierce Oil Company without any means or power to meet said judgment due to plaintiff, and that said Company ceased to do business on said transfer, and is no longer a going concern.

IX.

In the verified answer of Henry S. Priest and Clay Arthur Pierce, Trustees of the Waters Pierce Oil Company, it is alleged that all of the money and stock received by said Trustees from the Pierce Oil Corporation, was distributed by them among the stockholders of the Waters Pierce Oil Company, prior to the filing of this suit. Plaintiff does not controvert, and has no means of controverting said allegations, and, hence, the statement thus made under oath by said Trustees, in so far as it relates to the disposition of such money and stock before the institution of this suit, is admitted.

X.

It is admitted that on February 4, 1916, there was filed by the United States in the District Court of the United States, for the Western District of Louisiana, a bill of complaint against the Pierce

Oil Corporation, a certified copy of which, and a certified copy of the answer of the said Pierce Oil Corporation, are hereto annexed, and made a part of this stipulation of facts, and that said cause is now pending. This admission is made subject to the objection now urged by plaintiff to the relevancy, competency and admissibility of said facts. Plaintiff, while admitting the filing of said suit as a fact, objects to the relevancy thereof, and contends that the same is immaterial to the issues in this cause.

38 XI.

The facts herein set forth, are considered as all the facts in the case, and are admitted only for the purpose of this case, and not otherwise.

XII.

It is further agreed, that [*that*] this cause shall be submitted to the District Court, without argument, upon the pleadings and stipulation of facts herein above set forth, and that this stipulation of facts shall likewise be considered as the true facts for all purposes in the District Court, and in any Appellate Court to which the cause may be taken on appeal.

XIII.

It is agreed that this statement of facts shall not be construed as a waiver on the part of the defendants, of any issues of law raised by them in their motions to dismiss filed herein, and which were overruled by the Court, the said defendants expressly reserving all of their rights under said motions.

Dated at Shreveport, Louisiana, this 22nd day of February, 1918.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Dated at St. Louis, Missouri, this 9 day of March, 1918.

W. H. WOODWARD,
Attorneys for Plaintiff.

Dated at New York, New York, this 18th day of February, 1918.

J. MARKHAM MARSHALL,
Attorney for H. S. Priest and Clay Arthur Pierce, Individually.

Dated at St. Louis, Missouri, this 15 day of January, 1918.

FORDYCE, HOLLIDAY & WHITE,
Attorneys for H. C. Pierce & Pierce Investment Trust Co.

Dated at St. Louis, Missouri, this 14th day of January, 1918.

BOYLE & PRIEST,
Attorneys for Trustees.

39 EXHIBIT A.

(Minutes of the Meeting of the Board of Directors of Waters Pierce Oil Company, July 9, 1913.)

Office of Waters Pierce Oil Company.

ST. LOUIS, Mo., July 9, 1913.

The adjourned regular monthly meeting of the Board of Directors of the Waters Pierce Oil Company was held at the Company's office, #420 Olive Street, in the City of St. Louis, at eleven o'clock A. M., this, the 9th day of July, 1913, as per adjournment on the 7th inst.

There were present and participated in the meeting the following Directors,—Andrew M. Finlay, Thomas F. Lydon and J. A. Steward.

The Chairman of the Board and President being absent, Mr. Andrew M. Finlay, Vice President, presided; and Thomas F. Lydon, Secretary, acted in that capacity.

Minutes of the meeting held on the 7th instant were read and approved.

Vice President Finlay stated to the Board that the Pierce Oil Corporation had been formed under the laws of the State of Virginia, and was prepared to take over all of the property and assets of this corporation, giving to this corporation $10,500,000 in par value of the capital stock of said Pierce Oil Corporation, $5,000,000 in cash, in lawful money of the United States, and assuming all of the debts, liabilities and obligations of this corporation. Vice President Finlay stated further that the holders of more than four-fifths of the stock of this corporation had, in writing, requested the Board of Directors to make such transfer, and he duly presented such request in writing to the Board of Directors.

It was, on motion duly seconded, ordered that such request be received, and be spread on the minutes of this meeting as a part thereof, which is accordingly done as follows, viz:

"ST. LOUIS, Mo., July 7, 1913.

"We, the undersigned stockholders of Waters Pierce Oil Company, a corporation organized under the laws of the State of Missouri, comprising the holders of more than four-fifths of the capital stock of said Corporation, hereby do request, authorize and direct the Board of Directors of said Corporation to transfer all of
40 the assets of said Corporation, including all of its real, personal and mixed property, and chattels real, corporeal and incorporeal, of every name and nature, to Pierce Oil Corporation, a corporation organized and existing under the laws of the State of Virginia, in return for $10,500,000 par value of the common capital stock of said Corporation, $5,000,000 in cash in lawful money of the United States, and the assumption by said Pierce Oil Corporation of

all of the debts, liabilities and obligations of the Waters Pierce Oil Company.

"This instrument may be signed in more than one original counterpart and all original counterparts together shall be and be deemed to be a single instrument.

"In witness whereof, the undersigned have personally or by their respective duly constituted attorneys hereto subscribed their names, and written opposite thereto the number of shares held and owned by them in the said Waters Pierce Oil Company.

"Witness
"ALEXANDER B. SIEGEL.

"H. C. PIERCE, 2727 Shares,
By EBEN RICHARDS, *Att'y.*
"PIERCE INVESTMENT TRUST COMPANY, 1000 Shares,
By JOSEPH A. STEWARD, *Secretary.*
"ANDREW M. FINLEY, 1 Share,
"T. F. LYDON, 1 share,
"J. A. STEWARD, 1 share,
"CLAY ARTHUR PIERCE; 1 share."

The following preamble and resolutions were then moved, seconded and unanimously adopted:

"Whereas, Pierce Oil Corporation, a corporation organized under the laws of the State of Virginia, desires to purchase and take over all of the property and assets of this corporation, giving to this corporation $10,500,000 par value of the common capital stock of the Pierce Oil Corporation, $5,000,000 in cash in lawful money of the United States, and assuming all of the debts, liabilities and obligations of this corporation, and

"Whereas, the Board of Directors has been requested, authorized and directed in writing by stockholders of this Com-
41 pany holding more than four-fifths of its capital stock to make such sale and transfer upon such terms, and

"Whereas, the Board of Directors approve of such transfer upon such terms: Therefore be it

"Resolved, that all of the real, personal and mixed property, and chattels real, corporeal and incorporeal of this corporation, including all of its lands, tenements, and hereditaments, of whatsoever name and nature, leases, mining claims denouncements, prospects for oil and other mineral, easements, profits, covenents, warranties, licenses, permits, rights and choses in action in respect of real property and chattels real, and each and every other right, title or interest which it may now have or hereafter acquire in respect of real property, corporeal or incorporeal, and all chattels real, wherever situated, together with all fixtures and articles or personal property used on or in connection with its said real property and chattels real, and all of its chattels, goods, merchandise, machinery, tools supplies,

accounts, bills, notes, moneys, stocks, bonds, mortgages, credits, patents, trade marks, copyrights, trade names, good-will, rights and property, corporeal and incorporeal, of every kind, which this corporation now has or hereafter may acquire, the whole to be transferred as a going concern, in return for $10,500,000 of the common capital stock of the said Pierce Oil Corporation, $5,000,000 in cash in lawful money of the United States, and the assumption by said Pierce Oil Corporation of all of the debts, obligations and liabilities of this corporation;

"Resolved, that Clay Arthur Pierce, President; Andrew M. Finley, Vice President; Thomas F. Lydon, Secretary, and the other officers of this corporation be, and they hereby are respectively authorized and directed to do all and all manner of things, and to make, execute and deliver all and all manner of deeds, conveyances and other instruments as may be necessary, desirable or convenient to carry out the intent of these resolutions;

"Resolved, that Clay Arthur Pierce and Henry S. Priest be appointed agents and trustees of this corporation to receive for it the said $10,500,000 par value of the shares of the common capital stock of the Pierce Oil Corporation, the said $5,000,000 in cash, and any and all other things or instruments incident to the carrying out of the intent of these resolutions."

42 The meeting then adjourned until eleven o'clock A. M., Friday, July 11th, 1913.

——— ———,
Vice-President.

——— ———,
Secretary.

(*Certified Copy of Bill of Complaint in the case of United States of America v. Pierce Oil Corporation, filed February 4, 1916, in the U. S. District Court, Northern District of Louisiana.*)

In the District Court of the United States for the Western District of Louisiana.

No. 1080. In Equity.

UNITED STATES OF AMERICA, Plaintiff,

vs.

PIERCE OIL CORPORATION, Defendant.

To the Honorable Aleck Boarman, Judge of the District Court of the United States in and for the Western District of Louisiana:

The United States of America brings this its bill against the Pierce Oil Corporation, a corporation organied under the laws of Virginia and a citizen of that State, having its domicile in the City of Richmond, said corporation doing business in the State of Louisiana and

having its Louisiana domicile in the City of Shreveport, in the Western District of Louisiana. And for its cause of action, plaintiff states:

That on the 29th day of January, 1907, the grand jury at a term of this Honorable Court held at Alexandria, Louisiana, returned a bill of indictment against the Water-Pierce Oil Company, a corporation organized under the laws of Missouri and domiciled in the City of Saint Louis, said State, in which it was charged that said Waters-Pierce Oil Company had shipped from Bixby, Illinois, to various points in Louisiana on the Southern Pacific Railroad, fourteen tank cars of oil, at a rate less than the established and legal through rate, as will fully appear by reference to said indictment, No. 1626 on the docket of this Court, a copy of which is hereto attached and made a part hereof.

That on the trial of said case there was a verdict of guilty, and the Court imposed a fine of Fourteen Thousand Dollars ($14,000) and costs, amounting to Fourteen Hundred, Seventy-four and 44/100 Dollars ($1474.44), aggregating a total of Fifteen Thousand, Four Hundred, Seventy-four and 44/100 Dollars ($15,474.44), for which amount judgment was rendered and
43 signed on March 20, 1914, all of which will fully appear by reference to the judgment in said case No. 1629 on the docket of this court, entitled United States of America versus Water-Pierce Oil Company a copy of which is hereto attached and made part hereof.

Plaintiff states that said judgment was rendered in the City of Shreveport, Parish of Caddo, State of Louisiana, and was duly docketed and recorded in the office of the Clerk of the United States District Court in the said city and parish, where the said Clerk has a permanent office and a judgment record open at all times for public inspection.

Plaintiff shows that the said defendant, Waters Pierce Oil Company, obtained a writ of error from said judgment, without supersedeas, to the United States Circuit Court of Appeals for the Fifth Circuit, at New Orleans, Louisiana, and that on due hearing had the judgment of the lower court was affirmed.

Plaintiff shows that execution has issued on said judgment, and been returned nulla bona. That said Waters-Pierce Oil Company has no property within the jurisdiction of this Court.

Plaintiff shows that in July, 1913, the Waters-Pierce Oil Company transferred to the Pierce Oil Corporation all of its property, both real and personal, and its business as a going concern.

Plaintiff shows that on June 21, 1913, the Pierce Oil Corporation was organized under the laws of Virginia, almost, if not entirely, by the stockholders of the Waters-Pierce Oil Company, for the purpose of absorbing and taking over and succeeding to the assets, property and business of said Waters-Pierce Oil Company. That the capital stock of said corporation, authorized by its charter, is Twenty-one Million Dollars ($21,000,000), one half of which is common stock and the other half preferred stock.

Plaintiff shows that on July 9, 1913, at a meeting of the Board

of Directors of the Waters-Pierce Oil Company, it was stated by the Vice-President "that the Pierce Oil Corporation had been formed under the laws of the State of Virginia, and was prepared to take over all of the property and assets of the Waters-Pierce Oil Company, giving to it $10,500,000 in par value of the capital stock of the Pierce Oil Corporation and $5,000,000 in cash and assuming all of its debts, liabilities and obligations," whereupon a reso-
44 lution was adopted accepting the proposition of the Pierce Oil Corporation to transfer all of the assets and property, real, personal and mixed, of the Waters-Pierce Oil Company to it "as a going concern," in consideration of the price offered and the assumption by the purchaser of the payment of all debts, obligations and liabilities of the Waters-Pierce Oil Company, and the president, Clay Arthur Pierce, the vice-president, and Thomas F. Lydon, secretary, were by the resolution authorized to execute and deliver all deeds and conveyances necessary to carry out the intent of the resolution.

Plaintiff shows that on July 10, 1913, at a meeting of the Board of Directors of the Pierce Oil Corporation, a resolution was adopted authorizing the purchase by the officers of the company of all of the assets and property, real personal and mixed, of the Waters-Pierce Oil Company, for the sum and price of $10,500,000 in the common capital stock of the corporation and $5,000,000 in cash, and the assumption, on the part of the purchaser, of the payment of all debts, obligations and liabilities of the Waters-Pierce Oil Company, said stock and cash to be delivered to Clay Arthur Pierce and Henry S. Priest, residents of Saint Louis, Missouri, agents and trustees of the Waters-Pierce Oil Company, all of which will fully appear from copy of the minutes of the said meeting of the Board of Directors of the Pierce Oil Corporation of July 10, 1913, hereto attached and made part hereof.

Plaintiff shows that in accordance with said resolutions of said respective companies, the Waters-Pierce Oil Company, through its president, Clay Arthur Pierce, and its secretary, T. F. Lydon, executed to the Pierce Oil Corporation, represented by Clay Arthur Pierce, its president, and T. F. Lydon, its secretary, a conveyance of all of its assets and property, real personal, and mixed, as of date July 7, 1913, for the stated consideration of "one dollar, lawful money of the United States, and other valuable considerations, to it in hand paid," the other valuable considerations having been the payment of $10,500,000 in capital stock of the Pierce Oil Corporation and $5,000,000 in cash and the assumption of the payment of all the debts, liabilities and obligations of the Waters-Pierce Oil Company. That in said contract it was agreed that the officers of the Waters-Pierce Oil Company should thereafter make deeds to the real estate owned by said company in various states, in accordance with the laws of those states, all of which will appear by reference to copy of said agreement hereto attached and made part
45 hereof.

Plaintiff shows that in accordance with said agreement, the Waters-Pierce Oil Company has made formal deeds to the Pierce Oil

Corporation of all of its real estate in the State of Louisiana, as follows, to wit:

The following described property, situated in the Parish of Acadia, State of Louisiana: Lot One (1) in Block Eighty-eight (88), situated in the E. L. C. Addition to the Town of Rayne, said block bounded as follows: on the north by A Street, on the South by Lessley Street, on the east by Bradford Avenue, and on the West by McCown Avenue; said lot having a frontage of forty (40) feet on Bradford Avenue and running back between parallel lines a depth of One hundred and twenty (120) feet, as per plat on file in the Clerk's office in Crowley, Louisiana, transferred to the Pierce Oil Corporation by Waters-Pierce Oil Company as per deed recorded at pages 349 and 350, Book V-2, Conveyance Record of the Parish of Acadia, Louisiana.

The following described property, situated in the Parish of Caddo, State of Louisiana; A certain lot or parcel of land situated in the City of Shreveport, and described as follows: Commencing at the southeast corner of Lot Ten (10) of Section One (1), Township Seventeen (17), Range Fourteen (14), which is the center of Southern Avenue of the City of Shreveport, run thence west thirty feet to a stake in the Western Line of Southern Avenue for a starting point, thence run west two hundred thirty (230) feet to an iron pipe in the right of way of the Kansas City, Shreveport & Gulf Railway Company, thence North along said right of way of said Railway Company two hundred twenty and 4/100 (220.04) feet to a stake on the said right of way of said Railway Company, thence East two hundred and thirty (230) feet to a stake in the west line of Southern Avenue two hundred and twenty and 4/100 feet to the place of beginning, including in this sale all the right, title and interest of the vendor in that parcel of land lying between the Independent Ice and Cold Storage property and the H. & S. Ry. Company's lands, whether particularly described herein or not, with all buildings and improvements thereon, excepting a large red warehouse which the former vendor agreed to move within forty five days; all of above lands situated in Township 17, North of Range 14 West, in said Parish and State, transferred to the Pierce Oil Corporation by Waters-Pierce Oil Company as per deed recorded at page 89, Conveyance Book 89, Records of the Parish of Caddo, Louisiana.

46 The following described property, situated in the Parish of Calcasieu, State of Louisiana; A certain lot or parcel of land, situated within the City of Lake Charles, having one hundred forty-five (145) feet front on Lake Charles and running back three hundred fifty (350) feet in an easterly direction between parallel lines to Pithon Alley or Street (said 350 feet not including Front Street), and having the same front on Pithon Street of One Hundred Forty-five (145) feet as on the Lake Front; bounded on the north by lots of the Estate of Abel West and of Dr. Louis I. Esparjillier, on the East by Pithon Street, South by Gill Street, and West by Lake Charles, including all riparian rights thereto in any wise belonging, together with all improvements and appurtenances thereunto belonging, transferred to the Pierce Oil Corporation, by Waters-

Pierce Oil Company as per deed recorded at page 342, Book 142, Conveyance Records, of the Parish of Calcasieu, Louisiana.

The following described property, situated in the Parish of Iberia, Louisiana: containing and measuring one hundred and five (105) feet front on Morgan's La. & Texas Railroad; thence Two Hundred and six (206) feet on the right of way of the Jeanerette Lumber & Shingle Co., a railroad switch—; thence Ten (10) feet on a street to property formerly owned by Zenon Johnson; thence on line of property formerly of said Johnson parallel with said switch of the Jeanerette Lumber & Shingle Co., sixty-five (65) feet; and from thence on line of property now or formerly of said Johnson One Hundred Fifteen (115) feet to said Morgan's Louisiana & Texas Railroad, the point of beginning said property being bounded as follows: On the north by said street on which the ten feet run; on the south by said Morgan's Louisiana & Texas Railroad; on the east by said switch of the Jeanerette Lumber & Shingle Co., and on the west by said property formerly belonging to said Johnson being a part of that same property acquired by said Johnson from Henry Hebert in January, 1900, and by the said Henry Hebert from Jos. R. Bress, transferred to the Pierce Oil Corporation by Waters-Pierce Oil Company as per deed recorded at page 587, Book 77, Conveyance Records of the Parish of Iberia.

Also the following described property, situated in the Parish of Iberia, Louisiana, to-wit: A certain tract of land with all the buildings and improvements thereon and all the materials thereon with all the rights and privileges thereto attached, situated in the
47 City of New Iberia, Parish and State aforesaid, in the northwest portion of said city, having a front on Jefferson Street of One Hundred Feet along said street by a depth between parallel lines of Four Hundred and Ten feet, extending to the Railroad Avenue, bounded on the northwest by said Railroad Avenue, on the southeast by said Jefferson Street and on the northeast by Frere Street on the southeast by property now or formerly belonging to the vendors of Waters-Pierce Oil Company, transferred to the Pierce Oil Corporation by Waters-Pierce Oil Company as per deed recorded at page 589, Book 77, Conveyance Records of the Parish of Iberia, Louisiana.

The following described property, situated in the Parish of Lincoln, Louisiana: All that part of Lot four (4) in square thirty-one (31) according to the original plat of said town of Ruston on file and of record in Clerk's Office of Lincoln Parish, Louisiana, east [*or*] right of way of Ark. Southern Railroad, being the same property acquired by Waters-Pierce Oil Company by deed recorded in Conveyance Book T, Folio 524, transferred from Waters-Pierce Oil Company to Pierce Oil Corporation by deed recorded at pages 191 and 192, Book Z, Conveyance Records of the Parish of Lincoln, Louisiana.

The following described property, situated in the Parish of Ouachita, Louisiana: A certain triangular lot of ground situated in Delaney's First Addition to Monroe, in said City of Monroe, said Parish of Ouachita, fronting one hundred and seventy feet on Twelfth

Street; one hundred and ninety feet on Oak Street and two hundred and fifty-five feet on the Vicksburg, Shreveport & Pacific Railroad right of way, together with all the improvements and appurtenances thereunto belonging, transferred to Pierce Oil Corporation by Waters-Pierce Oil Company as per deed recorded at page 145, Conveyance Book 70, Records of the Parish of Ouachita, Louisiana.

The following described property, situated in the Parish of Rapides, Louisiana: A certain parcel of land in Cheneyville, Louisiana, being a portion of the Roberts Place acquired by Geo. W. Bennett from the New Orleans Canal & Banking Co. on the ninth day of March, 1887 by an act passed before Theodore Guyot, Notary Public in the City of New Orleans, Parish of Orleans, Louisiana, situated on the left descending bank of Bayou Bomf, containing one acre and eighteen hundredths of an acre of ground, bounded on the north by the Texas & Pacific Railway, south by lands now, or formerly owned by Laura Smith and west by lands formerly owned
48 by Geo. W. Bennett, transferred to Pierce Oil Corporation by Waters-Pierce Oil Company as per deed recorded at page 517, Book 64, Conveyance Records of the Parish of Rapides, Louisiana.

Also the following described property, situated in the Parish of Rapides, Louisiana: A certain tract or parcel of land of irregular shape, situated, lying and being in the City of Alexandria, State of Louisiana, and being a part of Block Six of the Wyano Land Company's Addition to said City of Alexandria, as numerically designated upon the official map of said Wyano Land Company's addition of record in the office of the recorder of said parish of Rapides, and as shown and designated upon the official map of said City of Alexandria by Ira W. Sylvester, C. E., the part and portion of said block herein conveyed being more particularly described as follows, to-wit: "Start at the intersection of Lee & Thorn Streets where said block narrows to a point and run along said Thorn Street a distance of two hundred and seventy-four feet, thence in a line parallel to said Lee Street a distance of ninety-eight (98) feet to the right of way of the Texas & Pacific Railway Company, thence along said right of way of the Texas & Pacific Railway Company, back to Lee Street, or the point of beginning," transferred by the Waters-Pierce Oil Company to Pierce Oil Corporation as per deed recorded at page 518, Book 64, Conveyance Records of the Parish of Rapides, Louisiana.

The following described property, situated in the Parish of Saint Landry, Louisiana: A certain parcel of land, more fully described as being Lot No. Thirteen (13) in Block Number Eighty-nine (89), bounded on the north by Lot No. Eleven (11) on the south by Lot No. Fourteen (14), East by C. S. N. O. & P. Ry. on the west by branch of L. W. R. R., measuring Fifty (50) feet, front on last named railroad by a depth of One Hundred (100) feet, as per original and official plat of survey of said town of Eunice, Louisiana. Being the same property acquired by the Waters Pierce Oil Company and recorded in the Parish of St. Landry, in Conveyance Book C, No. 4¼, folio —; transferred to Pierce Oil Corporation by Waters-

Pierce Oil Company as per deed recorded in Conveyance Book R-4, at page 564, records of the Parish of Saint Landry, Louisiana.

Also the following described property, situated, in the Parish of Saint Landry, Louisiana: A certain lot of ground within the limits of the town of Opelousas, fronting on Vine Street, said frontage being fifty feet and runs back south between parallel lines a distance of one hundred thirty-five feet; bounded on the north by
49 Vine Street, on the east, west and south by property now, or formerly of one Eleanor B. Comeau, being the same lot or parcel of property conveyed to said Waters Pierce Oil Company by said Eleanor B. Comeau, and her husband C. H. Comeau, by deed or act dated 12th day of June, 1907, together with all the rights, [privileges] and appurtenances thereunto belonging and which are mentioned in and described in said deed to said Waters-Pierce Oil Company from said Eleanor B. Comeau and C. H. Comeau, being the same property acquired by the Waters-Pierce Oil Company and recorded in the Parish of Saint Landry, in conveyance Book J-4, folio 604, transferred to Pierce Oil Corporation by Waters-Pierce Oil Company as per deed recorded in Conveyance Book R-4, at page 563, records of the Parish of St. Landry, Louisiana.

The following described property, situated in the Parish of Saint Martin, Louisiana, to-wit: First: A certain piece or portion of ground forming the corner of Lewis Street and Railroad track, situated in the Town of St. Martinville, State and Parish aforesaid, and measuring thirty (30) feet front on Lewis Street, by a depth running to a street separating said portion of ground from the property of Mrs. Widow Henry Blue; said piece of ground being bounded on the North by the railroad track, on the south by the property of Feliz Bienvenu, on the East by Lewis Street, and on the West by a street separating it from the property of Mrs. Henry Bleu; said portion of ground forming a part of a larger tract of ground situated in the said town, bounded on the North by a street separating it from the property of Mrs. Alex. Bienvenu, now the railroad track, south by lot formerly belonging to M. Bienvenu, now the property of R. J. Bienvenu, East by a street separating it from the Protestant Church called Lewis Street, and west by a street separating it from the property of Mrs. Henry Blue; it being the same property which was acquired by the old Waters Pierce Oil Company, by act of sale before W. A. Bienvenu, Notary Public, on the 4th day of December, 1895, which is recorded in the recorder's office in and for said Parish, in registrar of conveyances No. 49. Second: A certain piece or parcel of ground situated in the town of St. Martinville, Parish of St. Martin, State aforesaid, to be taken at a distance of thirty feet from the corner of Lewis Street and the railroad track, and measuring ten feet front on Lewis Street by a depth measuring to a street separating it from the property of Mrs. Henry Bleu; said piece or parcel of ground being bounded on the north by lot belonging to Waters-Pierce
50 Oil Company, on the South by property belonging to Feliz Bienvenu, on the east by Lewis street, and on the west by street separating it from the property of Mrs. Henry Blue; being the same property acquired by the Waters Pierce Oil Company from

Feliz Bienvenu, on March 16th, 1896, which act is recorded in the recorder's office in and for the Parish of St. Martin, in Register of Conveyances No. 49; transferred to Pierce Oil Corporation from Waters-Pierce Oil Company by deed recorded at page 345, Book 75, Conveyance Records of the Parish of Saint Martin.

The following described property, situated in the Parish of Saint Mary, State of Louisiana: The undivided one-half of that certain tract of ground lying and being situated in the town of Franklin, Parish of St. Mary, and designated as Lot Number Fourteen of map of land of E. J. Smith made by W. W. Johnson, Surveyor, June 16, 1888, having a front of seventy-two feet on the south side of Willow street, running between parallel lines until it intersects the property of Morgan La. & Texas Railroad & Steamship Company, bounded north by said Willow street, east of property now or formerly belonging to the estate of Jake Florenzie and south and west by Morgan La. & Texas Railroad & Steamship Co., with and including the building and improvements thereon situated, and thereto belonging; transferred by Waters-Pierce Oil Company to Pierce Oil Corporation as per deed recorded at page 41, Book 3-I, Conveyance Records of the Parish of Saint Mary, Louisiana.

All of which will fully appear by certified copies of deeds of real estate hereto attached and made part hereof. That all of said real estate above described is in the Western District of Louisiana, within the jurisdiction of this Court, and that plaintiff has the right to follow said real estate, so sold by its debtor the Waters-Pierce Oil Company, into the hands of the purchaser, Pierce Oil Corporation, and to have such judgment ordered and decreed to operate as a lien and judicial mortgage on said property and to have such judgment enforced against the same.

Plaintiff shows that the capital stock of the Waters-Pierce Oil Company was a trust fund for the payment of all of its creditors, and that the sale and transfer by it of all of its property to the Pierce Oil Corporation was fraudulent as against the rights of complainant, to the knowledge of the Pierce Oil Corporation, whose president and secretary were likewise president and secretary of the Waters-
51 Pierce Oil Company, and whose directors and stockholders, with slight exceptions, were the same as those of the Waters-Pierce Oil Company. That the said purchase by the Pierce Oil Corporation of all of the property and assets of the Waters-Pierce Oil Company was not a bona fide purchase in good faith and that said [*said*] sale and transfer of said property was made subject to the rights of all persons who had claims, debts or demands against said Waters-Pierce Oil Company, and subject to the liability of said Waters-Pierce Oil Company to complainant, and subject to whatever sentence might be imposed and judgment rendered on same against said Waters-Pierce Oil Company in the prosecution then pending in this Court.

Plaintiff shows that said transfer to the Pierce Oil Corporation was of all of its assets whatsoever and left it, the said Waters-Pierce Oil Company, without any means or power to meet its outstanding obligations, including that due your complainant; that said Waters-

Pierce Oil Company ceased to do business on said transfer of all of its property and is no longer a going concern.

That defendant, Pierce Oil Corporation, by absorbing the Waters-Pierce Oil Company and taking over all of its assets, property and business as a going concern, and by its express assumpsit of the payment of all debts, liabilities and obligations of the Waters-Pierce Oil Company, has made itself responsible for *and* obtained by complainant against said Waters-Pierce Oil Company.

Wherefore, plaintiff prays for process against the said Pierce Oil Corporation, through Charles D. Dickson, a resident of the Parish of Caddo, State of Louisiana, its agent in the State of Louisiana for the purpose of service of process, and that said Pierce Oil Corporation be cited to appear before this Honorable Court and answer this bill; and that on due hearing had this Court decree payment by said Pierce Oil Corporation of the aforesaid judgment of Fourteen Thousand Dollars ($14,000) and costs of One Thousand, Four Hundred, Seventy-four and 44/100 Dollars ($1,474.44), aggregating a total of Fifteen Thousand, Four Hundred, Seventy-four and 44/100 Dollars ($15,474.44); and that said judgment be made executory against the said Pierce Oil Corporation, and that plaintiff be decreed to have a lien and judicial mortgage upon the property in Louisiana, above described, sold and transferred by said Waters-Pierce Oil Company to said Pierce Oil Corporation in fraud of plaintiff's
52 rights, and that said property be ordered seized and sold to pay and satisfy said judgment and costs.

Plaintiff prays for all further orders necessary or needful, and for costs and general relief.

T. W. GREGORY,
Attorney General of the United States.
GEO. WHITFIELD JACK,
United States Attorney.
ROBERT A. HUNTER,
Assistant United States Attorney.

Endorsed: "No. 1080. In Equity. United States District Court, Western District of Louisiana. United States vs. Pierce Oil Corporation. Bill of Complaint. Filed Feb. 4, 1916, Leroy B. Gulotta, Clerk. U. S. District Court, West. Dist. of Louisiana.

United States District Court, Western District of Louisiana.

Clerk's Office.

I, W. B. Lee, Clerk of the United States District Court for the Western District of Louisiana, do hereby certify that the foregoing thirteen pages numbered from 1 to 13 inclusive, contain a true, full and correct copy of Bill of Complaint (Exhibits attached to Original Bill of Complaint not included herein), in a cause entit-ed United States of America vs. Pierce Oil Corporation. In Equity. No. 1080 on the docket of said Court, as the original of same appears on file in this office.

Witness my hand and seal at office, at the City of Shreveport, Louisiana, on this the 9th day of January, A. D. 1918.

[SEAL.] W. B. LEE,
Clerk United States District Court for the Western District of Louisiana.

53 (*Certified Copy of Answer in the Case of United States of America vs. Pierce Oil Corporation, Filed March 6, 1916, in the U. S. District Court, Northern District of Louisiana.*)

Now this day comes the Pierce Oil Corporation, Defendant in the above entitled cause, and for its Answer to the Bill in Chancery of Plaintiff therein, admits that it is a corporation organized under the laws of Virginia, having its domicile in the City of Richmond, in said State, and is doing business in the State of Louisiana, having its chief place of business therein in the City of Shreveport in the Western District of Louisiana.

And for further answer to plaintiff's bill, the defendant admits that on the 29th day of January, 1907, the Grand Jury, at a term of this Honorable Court held at Alexandria, Louisiana, returned an indictment against the Waters-Pierce Oil Company, a corporation organized under the laws of Missouri; that on the trial of said cause, there was a verdict of guilty and the Court imposed a fine of $14,000.00 and costs, for which amount Judgment was rendered and signed on March 20, 1914; admits that said judgment was rendered and signed on March 20, 1914; admits that said judgment was rendered at the City of Shreveport, Parish of Caddo, State of Louisiana, and was duly docketed and recorded in the office of the Clerk of this Court in said City and Parish; admits that the said defendant, Waters-Pierce Oil Company, obtained a Writ of Error from said judgment without supersedeas to the United States Circuit Court of Appeals for the Fifth Circuit of Louisiana and on due hearing the judgment of the lower court was affirmed, all as in said bill alleged; but defendant denies that the costs of said District Court in said Suit amounted to $1474.44 as in said bill alleged.

And answering further, the defendant admits that in July, 1913, the Waters-Pierce Oil Company [*transffered*] to the Pierce Oil Corporation all of its property both real and personal and its business as a going concern; admits that on June 21, 1913, the Pierce Oil Corporation was organized under the laws of Virginia with an authorized capital of $21,000,000.00, one-half of which is common stock and the other half preferred stock, but denies that said corporation was organized almost or entirely by the stockholders of the Waters-Pierce Oil Company for the purpose of absorbing and taking over and succeeding to the assets, property and business of the said Waters-Pierce Oil Company, as in the bill alleged.

54 Defendant further admits that on July 9, 1913, at a meeting of the Board of Directors of the Waters-Pierce Oil Company, it was stated by the Vice-President that the Pierce Oil Corporation had been formed under the laws of the State of Virginia

and was prepared to take over all the property and assets of the Waters-Pierce Oil Company, giving to it $10,500,000.00 in par value of the capital stock of the Pierce Oil Corporation, $5,000,000.00 in cash and assuming all of its debts, liabilities and obligations, and that thereupon a resolution was adopted accepting the proposition of the Pierce Oil Corporation for the transfer of the assets and property, real, personal, and mixed of the Waters-Pierce Oil Company, but defendant denies that said resolution was of the tenor and effect as stated in plaintiff's bill and defendant avers that said resolutions adopted, as aforesaid, were in words and figures as follows:

"Resolved, that all of the real, personal and mixed property, and chattels real, corporeal and incorporeal of this corporation, including all of its lands, tenements, and hereditaments, of whatsoever name and nature, leases, mining claims denouncements, prospects for oil and other mineral, easements, profits, covenents, warranties, licenses, permits, rights and choses in action in respect of real property and chattels real, and each and every other right, title or interest which it may now have or hereafter acquire in respect of real property, corporeal or incorporeal, and all chattels real, wherever situated, together with all fixtures and articles of personal property used on or in connection with its said real property and chattels real, and all of its chattels, goods, merchandises, machinery, tools, mortgages, credits, patents, trade-marks, copyrights, tools, mortgages, credits, patents, trade names, good-will, rights and choses in action, and all and singular its other personal and mixed property, corporeal and incorporeal, of every kind, which this corporation now has or hereafter may acquire, the whole to be transferred as a going concern, in return for $10,500,000 of the common capital stock of the said Pierce Oil Corporation, $5,000,000 in cash in lawful money of the United States, and the assumption by said Pierce Oil Corporation of all of the debts, obligations and — of this corporation;

"Resolved, that Clay Arthur Pierce, President; Andrew M. Finley, Vice President; Thomas F. Lydon, Secretary, and the other officers of this corporation be, and they hereby are respectively authorized and directed to do all and all manner of things, and to make, execute and deliver all and all manner of deeds, conveyances and other instruments as may be necessary, desirable or
55 convenient to carry out the intent of these resolutions;

"Resolved, that Clay Arthur Pierce and Henry S. Priest be appointed agents and trustees of this corporation to receive for it the said $10,500,000 par value of the shares of the common capital stock of the Pierce Oil Corporation, the said $5,000,000 in cash, and any and all other things or instruments incident to the carrying out of the intent of these resolutions."

Defendant also admits that on July 10, 1913, at a meeting of the Board of Directors of the Pierce Oil Corporation, a resolution was adopted authorizing the purchase by the officers of the company of all of the assets and property, real, personal, and mixed of the

Waters-Pierce Oil Company; admits that in accordance with said resolution, the Waters-Pierce Oil Company conveyed all of its assets and property, real, personal and mixed, and that said Company has made formal deeds to the Pierce Oil Corporation of all of its real estate in the State of Louisiana, all as averred and described in plaintiff's bill; but, defendant denies that plaintiff has the right to follow said real estate so sold by the Waters-Pierce Oil Company into the hands of the defendant and to have such judgment against the Pierce Oil Corporation ordered and decreed to operate as a lien and judicial mortgage on said property and enforced against the same,—as in plaintiff's bill alleged.

Answering further, defendant admits that the capital stock of the Waters-Pierce Oil Company was a trust fund for the payment of its creditors, but denies that the plaintiff was, or is, a creditor of said Waters-Pierce Oil Company with respect to the verdict and judgment sued on in this cause, and denies that the sale and transfer by said Waters-Pierce Oil Company of all of its property to the Pierce Oil Corporation was fraudulent as against the rights of complainant; denies that said purchase by the defendant of all the property and assets of the Waters-Pierce Oil Company was not a bona fide purchase in good faith; denies that said sale and transfer of said property was made subject to the liability of said Waters-Pierce Oil Company to complainant and subject to whatever sentence might be imposed and judgment rendered against said Waters-Pierce Oil Company in the prosecution then pending against said Waters-Pierce Oil Company,—all as in the bill averred.

Answering further, defendant admits that said Waters-Pierce Oil Company ceased to do business on transfer of all of its prop-
56 erty and is no longer a going concern; but defendant denies that the transfer of its assets left it without any means or power to meet its outstanding obligations or the [alleged] obligation due to complainant; denies that defendant by taking over the assets, property and business and by assuming the payment of all of its debts, liabilities, and obligations, this defendant has made itself responsible for the judgment obtained by complainant against said Waters-Pierce Oil Company.

And for its further answer and defense, defendant states that the sale by said Waters-Pierce Oil Company of all of its property and assets to this defendant was made in good faith and for a valuable consideration; that said sale and conveyance of said property and assets was made and consummated and the full consideration therefor was paid by this defendant on or about the seventh day of July, 1913, that thereafter, to-wit: on or about the 20th day of March, 1914, the trial under said indictment was had and verdict and judgment rendered against said Waters-Pierce Oil Company; that said indictment was for the alleged commission of a crime or misdemeanor by said Waters-Pierce Oil Company in contravention of the laws of the United States, and that the said judgment rendered thereunder was for the fine or penalty imposed by the said laws of the United States for said Crime or misdemeanor and did not then and there or at the time of the sale and conveyance of said property and assets of the Waters-Pierce Oil Company to this defendant, con-

stitute a debt, liability or obligation against said Waters-Pierce Oil Company or against this defendant, and that this defendant never agreed to pay, or assumed to pay, the fine or penalty which was adjudged against said Waters-Pierce Oil Company, as aforesaid.

Wherefore, having fully answered, defendant prays for judgment.

J. D. JOHNSON,
J. D. WILKINSON,
Solicitors for Defendant.

Endorsed: No. 1080. In Equity. In the District Court of the United States for the Western District of Louisiana. United States of America, Plaintiff vs. Pierce Oil Corporation, Defendant. Answer. Filed Mar. 6-1916 Leroy B. Gulotta, Clerk, U. S. District Court, West. Dist. of Louisiana.

57 United States District Court, Western District of Louisiana.

Clerk's Office.

I, W. B. Lee, Clerk of the United States District Court for the Western District of Louisiana, do hereby certify that the foregoing four pages numbered from 1 to 4 inclusive, contain a true full and correct copy of Answer in a cause entitled United States of America vs. Pierce Oil Corporation, In Equity, No. 1080 on the docket of said Court, as the original of same appears on file in this office.

Witness my hand and seal *at* office, at the City of Shreveport, Louisiana, on this the 9th day of January, A. D., 1918.

[SEAL.]

W. B. LEE,
Clerk United States District Court for the Western District of Louisiana.

Affidavit of Clay A. Pierce as to Shares of Stock, etc., of Pierce Oil Corporation.

STATE OF NEW YORK,
County of New York, ss:

Clay Arthur Pierce, being duly sworn, deposes and says, as follows:

That on or before July 29th, 1913, this deponent and Henry S. Priest, as Liquidating Agents and Trustees of Waters Pierce Oil Company, delivered all of the cash and shares of stock of Pierce Oil Corporation remaining in their hands after the distribution, described in the agreed stipulation of facts and agreement of counsel herein, to Guaranty Trust Company of New York, which was created by mutual agreement of all parties concerned the agent and trustee to distribute said cash and stock among the then holders of approximately two hundred and sixty-nine (269) shares of stock of Waters Pierce Oil Company; that on or about the said date of July 29th, 1913, this deponent and said Henry S. Priest, as Liqui-

dating Agents and Trustees of Waters Pierce Oil Company, mailed a circular to said stockholders of Waters Pierce Oil Company, dated as of July 25th, 1913, advising that upon surrender to Guaranty Trust Company of New York, 140 Broadway, New York City,
58 N. Y., of their certificates of Waters Pierce Oil Company properly endorsed each would receive his share of said cash and stock of Pierce Oil Corporation; this deponent is advised and believes that thereupon the Guaranty Trust Company proceeded to distribute and did distribute among said stockholders of Waters Pierce Oil Company the said cash and stock of Pierce Oil Corporation, delivered to them on July 29th, 1913, as hereinbefore set forth: that since said date of July 29th, 1913, this deponent and the said Henry S. Priest, as Liquidating Agents and Trustees of Waters Pierce Oil Company, have not had in their hands or in their custody or control any of the money or stock originally placed in their hands as such Liquidating Agents and Trustees.

CLAY ARTHUR PIERCE.

Sworn to before me this 18th day of February, 1917.

[SEAL.] JESSE MYERS,
Notary Public N. Y. Co. No. 339.

Endorsed: "Filed Mar. 9, 1918, W. W. Nall, Clerk."

(*Decree of the District Court, March* 11, 1918.)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

No. 4538. In Equity.

UNITED STATES OF AMERICA, Complainant,

vs.

WATERS PIERCE OIL COMPANY, a Corporation; HENRY S. PRIEST, CLAY ARTHUR PIERCE, HENRY CLAY PIERCE, and PIERCE INVESTMENT TRUST COMPANY, a Corporation, Defendants.

This cause having come on to be heard at the present term of this Court, and having been submitted to the Court, by stipulation of counsel, upon the pleadings and upon the agreed statement of facts filed herein; the Court being now fully advised in the premises doth find the facts in conformity with said agreed statement, and doth find the issues herein joined in favor of said complainant and against the defendants Henry Clay Pierce, Pierce Investment Trust Company and Clay Arthur Pierce (as an individual), and against said complainant and in favor of defendants Waters Pierce Oil Company, a corporation, Henry S. Priest and Clay Arthur Pierce as agents and trustees of said Waters Pierce Oil Company; wherefore the Court doth Order, Adjudge and Decree, as follows:

1. That the judgment obtained by the United States of America in the United States District Court for the Western District
59 of Louisiana, at Alexandria, Louisiana, on January 29th, 1907, in the principal sum of $14,000.00 is a valid and subsisting judgment against the Waters Pierce Oil Company, a corporation; and that said defendant has divested itself of all its property and has no assets subject to execution under said judgment.

2. That under the terms of the sale of the property of said Waters Pierce Oil Company, a corporation, the following named parties received, as the proceeds in whole or in part of their respective holdings of stock in said corporation, the amounts of money set opposite their respective names, to wit:

Name.	Amount.
Henry Clay Pierce	$3,408,750.00
Pierce Investment Trust Company	1,250,000.00
Clay Arthur Pierce	1,250.00

which amounts are, in equity, subjected to the payment of the aforesaid judgment obtained by the United States of America.

3. That the defendant Waters Pierce Oil Company, a corporation, having divested itself of all its property, and that the defendants Henry S. Priest and Clay Arthur Pierce, (as trustees &c.) having divested themselves of the money, stock, property and effects received by them as Trustees and Agents of the said Waters-Pierce Oil Company, a corporation, by disbursing the same to the holders of stock in said Waters-Pierce Oil Company, a corporation, as beneficiaries—are dismissed from the cause, without day.

4. That the complainant have and recover of the defendants Henry Clay Pierce, Pierce Investment Trust Company, a corporation, and Clay Arthur Pierce (as an individual), in satisfaction of the judgment obtained as aforesaid in the Western District of Louisiana, the sum of Fourteen Thousand Dollars, with interest at 6% thereon from January 29th, 1907, save that as against the defendant Clay Arthur Pierce (as an individual) this judgment is limited to the amount of money so received by him as stockholder-beneficiary aforesaid, namely, Twelve Hundred Fifty Dollars; and that complainant recover of said three named defendants its costs and charges herein expended, for all of which let execution issue as at law.

March 11th, 1918.
(Signed) DAVID P. DYER,
Judge.

Endorsed: "Filed Mar. 11, 1918, W. W. Nall, Clerk."

60 *(Petition for and Order Allowing Appeal.)*

To the Honorable David P. Dyer, District Judge:

The above named Clay Arthur Pierce, Henry Clay Pierce and Pierce Investment Trust Company, Defendants, being aggrieved by the decree and order rendered and entered in the above entitled cause on the 11th day of March, A. D. 1918, do hereby appeal from said decree and order to the Circuit Court of Appeals for the Eighth Circuit for the reasons set forth in the Assignment of Errors, filed herewith, and they pray that their appeal be allowed and that citation be issued as provided by law and that a transcript of the record, proceedings, and documents upon which said decree and order was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Eighth Circuit, under the rules of said Court in such cases made and provided.

And Your petitioners further pray that the proper order relating to the required security to be required of them be made.

CLAY ARTHUR PIERCE,
By BOYLE & PRIEST,
His Attorney.
HENRY CLAY PIERCE &
PIERCE INVESTMENT TRUST CO.,
By FORDYCE, HOLLIDAY & WHITE,
Their Attorney-.

Appeal allowed upon giving bond as required by law in the sum of $500. but not to act as supersedeas.

(Signed) DAVID P. DYER,
Judge.

Endorsed: "Filed Mar. 22, 1918, W. W. Nall, Clerk."

(Record Entry of the Filing of Assignment of Errors, Petition for Appeal, etc.)

Now at this day come the defendants, Clay Arthur Pierce, Henry Clay Pierce, and the Pierce Investment Trust Company, a corporation, and file their joint assignment of errors, their petition for an appeal in this cause to the United States Circuit Court of Appeals for the Eighth Circuit, and a stipulation of parties waiving the issuance of a citation herein.

(March 22nd, 1918, David P. Dyer, Judge.)

61 *Assignment of Errors.*

Now come, Clay Arthur Pierce, Henry Clay Pierce, and Pierce Investment Trust Company, Defendants in the above entitled cause and file the following assignment of errors upon which they will

rely upon their prosecution of the appeal in the above entitled cause, from the decree made by this Honorable Court on the eleventh day of March, 1918.

1. That the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri erred in refusing to dismiss the first amended bill, of plaintiff and in overruling defendants' separate motions to dismiss said case.

2. That the first amended bill in said case does not set out a cause of action or ground for recovery in equity against said defendants or either of them.

3. That said amended bill sets forth separate and distinct claims of different characters against the various defendants therein and is otherwise multifarious.

4. That there is [misjoin-er] of parties defendant in said amended bill and cause, in that the claim or alleged causes of action do not affect all of the defendants alike or in the same capacity.

5. That there is a [misjoin-er] of claims or alleged causes of action in said amended bill and cause in that the causes of action against the various defendants are of different nature and which are not cognizable in equity in the same action.

6. That it appears from the averments of said amended bill and stipulation of facts that defendants' liability or cause of action is asserted against the different defendants therein, in this: that judgment is sought against the defendants Henry S. Priest and Clay Arthur Pierce for property and money of Waters-Pierce Oil Company, alleged to be in their hands as liquidated agents of said company, while the judgment sought and obtained against the defendants Henry Clay Pierce, Pierce Investment Trust Company and Clay Arthur Pierce, individually as and for moneys of Waters-Pierce Oil Company alleged to have been paid to them respectively in liquidation and redemption of shares of stock held by them [separately] in said company.

7. That said amended bill asserts a different cause of action against the different material defendants joined in the cause, without sufficient grounds being stated or appearing for so doing, contrary to the equity rules of this court.

62 8. That it appears from the averments of said amended bill and stipulation of facts the action is for the recovery of a fine from these defendants, as and for the violation of a penal statute of the United States and it therefore seeks to hold these defendants to answer for an infamous crime without a presentment or indictment of the Grand Jury, contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

9. That it appears from said amended bill that the suit purports to be a proceeding in equity, while it also appears that the action is,

in fact, for the recovery of a fine from these defendants for the violation of a penal statute of the United States and is, therefore, a criminal prosecution, and deprived these defendants of a trial therein by jury contrary to the provisions of the Sixth Amendment to the Constitution of the United States.

10. That the action is in the nature of a criminal proceeding against these defendants, and has compelled and will compel them to be witnesses against themselves in a criminal case, contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

11. That the rendering and enforcing of the judgment against these defendants for any part of the sum sued for in said cause deprives them, and each of them, of their property without due process of law, contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

12. That the United States accuses the various defendants of a conspiracy punishable by section 37 of the Revised Penal Code of the United States (enacted March 4, 1909) and has compelled and will compel them by answering therein to be witnesses against themselves in a criminal case—contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

13. That all of the stockholders of said Waters Pierce Oil Company are necessary and proper parties to this proceeding, that this cause should not have proceeded without said stockholders being brought in as such parties, and that proceeding without them is inequitable and unjust to the present defendants and will result in a multiplicity of suits.

14. That the court erred in not ordering, adjudging and decreeing that the plaintiff is forever barred from proceeding in the present cause on account of the filing of the suit on February 4, 1916 by plaintiff in the United States District Court for the Western District of Louisiana against the Pierce Oil Corporation, the description of said suit being more particularly set out in the stipulation of facts filed in this cause; and in not ordering, adjudging and decreeing that said matters constitute an election of remedies, a waiver, and an estoppel and in not ordering, adjudging, and decreeing that on account of said matters the plaintiff in the present case has a plain and adequate and complete remedy at law.

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15. That the decree entered in this cause is for the wrong party.

16. That the decree entered in this cause is inequitable, unjust, unfair, and unscionable.

17. That said judgment and decree in this cause is insufficient, indefinite, uncertain, and incapable of enforcement.

18. That said judgment and decree in this case is not in con-

formity with the pleadings and stipulation of facts and is inconsistent therewith and with itself.

19. That the court erred in not entering an order, judgment and decree in favor of these defendants and in not dismissing the bill against them.

20. That the court erred in not adjudging and decreeing that the plaintiff's only remedy is against the Pierce Oil Corporation, there being no proof of insolvency on the part of the Pierce Oil Corporation and no fraud on the part of the Waters Pierce Oil Company, its officers, directors or stockholders, nor on the part of the Pierce Oil Corporation and it appearing that the Pierce Oil Corporation assumed all of the debts and liabilities of the Waters Pierce Oil Company.

21. That this suit was prematurely brought in that, at the time of the filing of the original bill herein, no execution had been issued against the Waters Pierce Oil Company out of the United States District Court for the Western District of Louisiana, direct to the United States Marshal of the Eastern District of Missouri, and none was so issued until after the filing of the original bill in this cause.

22. That the plaintiff must secure a judgment in the State of Missouri or in the United States District Court sitting in the State of Missouri, against the Waters Pierce Oil Company before the plaintiff has a right to proceed in equity to reach equitable interests; that neither the bill nor stipulation of facts show- grounds for recovery in equity in that it is not alleged that any judgment has been obtained against, the Waters Pierce Oil Company in Missouri nor any effort to obtain one nor is it [aver-ed] or shown that
64 it was impossible to obtain one; and that under the ruling in the case of the National Tube Works Company vs. Ballou, 146 U. S. 517, and other cases, the present case is not well founded in equity.

23. That the execution issued out of the United States District Court for the Western District of Louisiana, after the filing of the original bill herein, is void, in that, there is no authority under the statutes and decisions to issue an execution of this character.

Wherefore, the appellants pray that said decree be reversed and that said district court for the eastern division of the eastern judicial district of Missouri be ordered to enter a decree reversing its decision in said cause and be ordered to set aside said decree and to enter a decree in favor of the defendants, Clay Arthur Pierce, Henry Clay Pierce and Pierce Investment Trust Company.

BOYLE AND PRIEST,
Solicitors for Clay Arthur Pierce.

FORDYCE, HOLLIDAY & WHITE,
Solicitors for Henry Clay Pierce and Pierce Investment Trust Co.

Endorsed: "Filed Mar. 22, 1918, W. W. Nall, Clerk."

(*Order Approving Appeal Bond, etc.*)

Now at this day come the defendants Clay Arthur Pierce, Henry Clay Pierce and the Pierce Investment Trust Company, and present their appeal bond in this cause, which is now approved by the Court and filed; and the said appealing defendants further file their joint election and praecipe for a transcript of the record herein.

(March 23rd, 1918.

DAVID P. DYER, *Judge.*)

(*Appeal Bond.*)

Know All Men By These Presents,

That we, Clay Arthur Pierce, Henry Clay Pierce and Pierce Investment Trust Company, as Principals, and National Surety Company as Surety, are held and firmly bound unto United States of America in the full and just sum of Five Hundred Dollars ($500.00) to be paid to the said United States of America, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals, and dated this 22nd day of March in the year of our Lord one thousand nine hundred and eighteen.

65

Whereas, lately at the September term A. D. 1917, of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, in a suit depending in said Court between United States of America plaintiff and Waters Pierce Oil Company, Henry S. Priest, Clay Arthur Pierce, Henry Clay Pierce and Pierce Investment Trust Company, defendants, final judgment and decree was rendered against the said Clay Arthur Pierce, Henry Clay Pierce and Pierce Investment Trust Company, and the said Clay Arthur Pierce, Henry Clay Pierce and Pierce Investment Trust Company have obtained an order of said court allowing an appeal from said judgment and decree of the said Court to reverse the said Judgment and decree in the aforesaid suit, and a citation directed to the said United States of America has been waived.

Now the condition of the above obligation is such, that if the said Clay Arthur Pierce, Henry Clay Pierce and Pierce Investment Trust Company shall prosecute said appeal to effect, and answer all costs if they fail to make good their plea, then the above obligation to be void, else to remain in full force and virtue. The obligation of the surety is limited to the amount of this bond, to-wit, $500.00.

Sealed and delivered in presence of:

CLAY ARTHUR PIERCE,
By G. T. PRIEST; [SEAL.]
HENRY CLAY PIERCE,
By FORDYCE, HOLLIDAY & WHITE,
His Attorneys. [SEAL.]
PIERCE INVESTMENT TRUST COMPANY,
By FORDYCE, HOLLIDAY & WHITE,
Its Attorneys. [SEAL.]
Principals.
NATIONAL SURETY COMPANY,
By L. J. NICHOLS,
Attorney in Fact, [SEAL.]
Surety.

Approved by:

(Signed) DAVID P. DYER, *Judge.*

Endorsed: "Filed Mar. 23, 1918, W. W. Nall, Clerk."

66 *(Pxcipe for and Election as to Transcript.)*

To the Clerk of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri:

In preparing the testimony upon the defendants' appeal in the above entitled cause from the order entered on the 11th day of March 1918 which order was appealed from by the defendants to the Circuit Court of Appeals for the Eighth Circuit, you will please include in said transcript, a copy of the entire record and proceedings had in your District Court, except original and alias subpœnas in chancery, application for temporary injunction and entries of appearance and withdrawals of counsel. And appellants hereby elect to have said transcript printed under the supervision of the Clerk of the U. S. Circuit Court of Appeals.

BOYLE AND PRIEST,
Attorneys for Clay Arthur Pierce, Defendant
FORDYCE, HOLLIDAY & WHITE,
Attorneys for Henry Clay Pierce and Pierce Investment Trust Company, Defendants.

Service of the above Precipe is hereby acknowledged this 18th day of March, 1918.

W. H. WOODWARD,
Attorney for Plaintiff.

Endorsed: "Filed Mar. 23, 1918, W. W. Nall, Clerk."

(*Clerk's Certificate to Transcript.*)

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, ss:

I, W. W. Nall, Clerk of the District Court of the United States, within and for the Eastern Division of the Eastern Judicial District of Missouri, do hereby certify that the above and foregoing is a full, true and complete transcript of the record and proceedings, in cause No. 4538, of United States of America, Complainant, vs. Waters Pierce Oil Company, Henry S. Priest, Clay Arthur Pierce, Henry Clay Pierce, and Pierce Investment Trust Company, Defendants, together with all things of and concerning the same (save as restricted by the praecipe for transcript hereinbefore set forth) as fully
67 as the same remains on file and of record in said cause in my office, and that the original waiver of issuance of citation is hereto attached and herewith returned.

In witness whereof, I hereunto set my hand and affix the seal of said District Court, at office in the City of St. Louis, in said Division of said District this 1st day of April, A. D. 1918.

[Seal U. S. Dist. Court, Eastern Division, East. Dist. of Mo.]

W. W. NALL,
Clerk of said Court.
By OTTO O. FICKEISSEN,
Deputy Clerk.

Filed Apr. 1, 1918. E. E. Koch, Clerk.

68 And thereafter the following proceedings were had in said cause, in the Circuit Court of Appeals, viz:

(*Appearance of Mr. Robert A. Hunter as Counsel for Appellee.*)

United States Circuit Court of Appeals, Eighth Circuit.

No. 5145.

CLAY ARTHUR PIERCE et al., Appellants,

vs.

UNITED STATES OF AMERICA.

The Clerk will enter my appearance as Counsel for the Appellee.
ROBERT A. HUNTER,
Special Assistant to the Attorney General, Shreveport, Louisiana.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Apr. 12, 1918.

(*Appearance of Mr. G. T. Priest as Counsel for Appellants.*)

The Clerk will enter my appearance as Counsel for the Appellants.

G. T. PRIEST.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Apr. 17, 1918.

69 (*Appearance of Mr. W. H. Woodward as Counsel for Appellee.*)

The Clerk will enter my appearance as Counsel for the Appellee.

W. H. WOODWARD,
Ass't U. S. Att'y.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Apr. 17, 1918.

(*Appearance of Messrs. Fordyce, Holliday & White and Mr. Truman Post Young as Counsel for Appellants.*)

The Clerk will enter my appearance as Counsel for the Appellants.

SAMUEL W. FORDYCE, Jr.
JOHN H. HOLLIDAY.
THOMAS W. WHITE.
TRUMAN POST YOUNG.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Apr. 19, 1918.

(*Appearance of Mr. Albert D. Nortoni as Counsel for Appellants.*)

The Clerk will enter my appearance as Counsel for the Appellants.

ALBERT D. NORTONI.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, May 27, 1918.

70 (*Order of Submission.*)

May Term, 1918.

Wednesday, May 29, 1918.

This cause having been called for hearing in its regular order, argument was commenced by Mr. Albert D. Nortoni for Appellants, continued by Mr. Robert A. Hunter and Mr. W. H. Woodward for

the appellee and concluded by Mr. Truman P. Young for the appellants.

Thereupon, this cause was submitted to the Court on the transcript of the record from said District Court and the briefs of counsel filed herein.

71 (*Opinion on Merits.*)

United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1918.

No. 5145.

CLAY ARTHUR PIERCE et al., Appellants,

vs.

UNITED STATES OF AMERICA, Appellee.

Appeal from the District Court of the United States for the Eastern District of Missouri.

Mr. Albert D. Nortoni and Mr. Truman Post Young (Mr. Samuel W. Fordyce, Jr., Mr. John H. Holliday, Mr. Thomas W. White, Mr. George T. Priest and Mr. J. Markham Marshall on the brief), for appellants.

Mr. Robert A. Hunter, Special Assistant to the Attorney General, and Mr. W. H. Woodward, Assistant United States Attorney, for appellee.

Before HOOK and STONE, Circuit Judges, and WADE, District Judge.

HOOK, *Circuit Judge*, delivered the opinion of the Court.

This suit in equity was brought by the United States in the United States District Court for the Eastern District of Missouri, against the Waters Pierce Oil Company, a Missouri corporation, and certain of its stockholders, to recover the amount of a judgment obtained against that company in the United States District Court for the Western District of Louisiana. The Government was given a decree against three of the stockholders and they appealed.

72 The facts, briefly stated, are these: In January, 1907, the Waters Pierce Oil Company was indicted in the court in Louisiana for receiving rebates on interstate shipments contrary to the Elkins Act (32 Stat. 847). In July, 1913, the Waters Pierce Oil Company sold and conveyed all its property and assets to the Pierce Oil Corporation, organized under the laws of Virginia, for $5,000,000 in money and $10,500,000 of the common stock of the latter. The vendee assumed all the vendor's "debts, liabilities and obligations". The money and shares of stock were lodged with trustees who distributed them ratably among the stockholders of the

Waters Pierce Oil Company, including the three appellants, and that company thereupon ceased business. In March, 1914, the case in Louisiana was tried with the result that the Waters Pierce Oil Company was convicted and fined $14,000. The offense under the Elkins Act was punishable by a fine only. In March, 1915, the judgment was affirmed by the Fifth Circuit Court of Appeals (137 C. C. A. 293, 222 Fed. 69). An execution was issued to the marshal of the Louisiana district and returned nulla bona in August, 1915. This suit was begun in February, 1916. In March, 1917, another execution was issued on the judgment in Louisiana, but directed to the marshal for the Eastern District of Missouri (see Rev. Stat. sec. 986; 3 U. S. Comp. Stat. 1916, sec. 1632); this execution was also returned nulla bona; and in August of that year the Government filed an amended complaint setting forth the facts regarding the second execution. The decree against the three appellants was not in excess of the amounts of money they received in the distribution of the proceeds of the sale. The controlling questions in the case are whether a judgment imposing a fine in a criminal prosecution by the United States may support a creditor's bill in aid of an execution that has proved fruitless; and, if so, whether the appellants can be held liable, to the extent of their distributive shares of the funds, for the judgment against their corporation under the circumstances of this case.

It is contended by the appellants that the relation of debtor and creditor is essential to a proceeding in equity in aid of an execution at law, that a liability to a fine for a penal offense does not give rise to the relation, and that the character of the judgment is determined by that of the liability upon which it is founded. The term "debt" has a variety of meanings, not a settled or invariable
73 one. It takes color from its surroundings. Whether the duty to pay a sum of money is or is not a debt depends upon the particular sense in which it is used. In a broad sense a debt may signify any duty to respond to another in money, labor or service. It may even mean a moral or honorary obligation unenforceable by legal action. United States v. Realty Co., 163 U. S. 427, 440. When used restrictively it may mean, without more, an obligation founded on contract to pay a definite or certain sum of money. There is much nice learning upon the subject, some of it of an historical character, but it need not be reviewed here. It is provided by an act of Congress that a judgment imposing a fine for an offense against the laws of the United States "may be enforced by execution against the property of the defendant in like manner as judgments in civil cases are enforced." (Rev. Stat. sec. 1041; 3 U. S. Comp. Stat. 1916, sec. 1705.) We think the provision of the statute is broad enough to embrace those processes and proceedings in aid of or supplemental to an execution that are customary in civil cases. A poor offender may escape a fine by taking the oath of poverty, but we do not think it was the intention to relieve one able to pay because his property is incorporeal or equitable in character, or one who, for the purpose of defeating the judgment, removes his tangibles beyond the reach of an ordinary writ of execution. As

employed in the statute, "execution" signifies generally the means for enforcing the judgments of courts in civil cases.

Upon the other question the Government contends that the Waters Pierce Oil Company rendered itself insolvent by the sale of all its property and the distribution of the proceeds among its stockholders; that upon the insolvency of a corporation its property becomes a trust fund for its creditors; and that in the case at bar the proceeds in the hands of the stockholders are substituted for the property and may be followed in a suit to enforce the trust. The Supreme Court has many times declared that the property of an insolvent corporation is held in trust for the benefit of its creditors. There is some question about the precise nature of the trust and when it arises. It has been said: "It is rather a trust in the administration of the assets after possession by a court of equity than a trust attaching to the property, as such, for the direct benefit of either creditor or stockholder." Hollins v. Brierfield Coal & Iron Co., 150 U. S. 371.

74 Again, the trust has been held to arise at the moment of insolvency. McDonald, Receiver, v. Williams, 174 U. S. 397, 404. However this may be, the nearest approach to the case at bar in its facts is Swan Land and Cattle Co. v. Frank, 148 U. S. 603. There the plaintiff had an unliquidated claim for damages against three corporations which sold substantially all their property, distributed the proceeds and remaining assets among their stockholders, and quit business. There was, as here, no contention that otherwise than by the sale and the distribution of proceeds and assets the corporations were or became insolvent. The suit was against a part of the stockholders. The court said:

"The theory of the bill is, that the assets of the vendor corporations which have been distributed to and received by the defendants as stockholders constitute a trust fund for the payment of all debts and demands against the companies, and may, therefore, be followed in the hands of, and recovered from, such stockholders, to the extent necessary to discharge valid claims against the corporations from which they were received. The funds sought to be reached are undoubtedly applicable, under proper proceedings against all necessary parties, to the payment, so far as may be needed, of outstanding indebtedness against the corporations which distributed the same; but the difficulty here is that the complainant has not adopted the requisite and necessary procedure to subject said funds thereto. It has no judgment against the corporations by which it was defrauded, nor are such corporations made parties defendant to the suit or brought before the court."

The bill was ordered dismissed without prejudice because plaintiff's claim had not been reduced to judgment and the debtor corporations had not been made parties. Neither of the reasons which stood in the way of relief in that case are present in the case at bar. Here the Government has a judgment on which execution has been returned unsatisfied and the Waters Pierce Oil Company, the judgment debtor, is a party defendant. The case cited seems persuasive if not decisive of the liability of the appellants.

The assumption by the vendee company of the debts, liabilities and obligations of the Waters Pierce Oil Company does not relieve the stockholders who have received the proceeds of the sale of the assets of their corporation from responsibility to a creditor.
75 Though it may be said that an action against the vendee might be maintained upon the ground of a contract between two persons for the benefit of a third, the remedy is not exclusive in the absence of novation when one of the contracting parties is the primary debtor. The assumption by the vendee company is rather for the assurance and benefit of the Waters Pierce Oil Company and its stockholders. What we have said of the liability of stockholders in a case like that at bar must not be understood as applying to a case of consolidation of corporations by authority of law, nor to the reorganization of the affairs of an insolvent corporation according to the settled principles of equity.

The decree is affirmed.

Filed April 15, 1919.

WADE, *District Judge*, dissenting:

I cannot concur in the majority opinion, for the reason that, as I view the case, the plaintiff (in the trial court) had an adequate remedy at law, and that resort to the extraordinary remedies here sought in a court of equity cannot be had, in any event, until such legal remedies are exhausted.

If this judgment is a "debt" as held by the majority, it is certainly covered by the express language of the contract by which the Pierce Oil Corporation assumed "all debts, obligations and liabilities of the Waters Pierce Oil Company" and the plaintiff could have proceeded in an ordinary suit at law to recover upon such covenant.

It may be true, as stated in the majority opinion that "the assumption by the vendee company of the debts, liabilities and obligations of the Waters Pierce Oil Company does not relieve the stockholders who have received the proceeds of the sale of the assets of their corporation from responsibility to a creditor," but the creditor is only interested in getting his money, and if he can get it by an ordinary law action, he cannot invoke the powers of a court of equity. I can also agree that "the remedy (against vendee) is not exclusive," but I hold that resort must first be had to the ordinary remedy at law, and that plaintiff can come into equity only when that fails; not only this, but in equity and in justice, the vendee should pay
76 this judgment if any one does. For a valuable consideration it agreed to pay this judgment (if it is a debt, obligation or liability), and the stockholders who received nothing except what they were legally entitled to should not be held primarily liable.

I agree with the majority that the assets of a corporation constitute in a sense a trust fund which under certain circumstances may be subjected in the hands of stockholders to the payment of cor-

porate debts. But this is not an action to reach certain "assets" of the corporation; it is an action for a personal judgment against the stockholders. It is not averred that they now have any of the assets, nor is it sought to trace these "trust funds" into anything that defendants now own. So far as the record discloses, these defendants did not have at the time of the trial, a dollar or a share of stock received at the time of the distribution. Under these circumstances, if liable, why are they liable? Their liability can rest only upon the fact that they are wrongdoers, because by fraud (actual or constructive), they have been parties to the dissipation of the assets of the corporation which the corporation should have first applied to the payment of its obligations.

The plaintiff is in no position to refuse to proceed at law. There are no equities in its favor. The indictment rested untried for six years before the transfer of the property was made. It was not brought to trial for nearly a year after the transfer. It is in no position to appeal for special relief, certainly not against men who, as stockholders of the old and of the new corporations, made specific provision for the payment of all debts, obligations and liabilities.

Furthermore, the record shows that on February 4, 1916, before this action was commenced on February 18, 1916, the plaintiff had brought suit at law in Louisiana to enforce against the vendee the covenant of assumption to pay all the "debts, obligations and liabilities of the Waters Pierce Oil Company" and that such action at law is still pending. I do not hold that this is an absolute election of remedies, but I do hold, that having so elected and proceeded, and it not being claimed that the remedy in that Court is not adequate, this Court should grant no relief.

77 If these defendants are liable, such liability is only secondary; if the judgment can be enforced against the Waters Pierce Oil Company or its vendee, the defendants are not liable at all.

Filed April 15, 1919.

78 (*Decree.*)

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1918.

Monday, April 28, 1919.

No. 5145.

CLAY ARTHUR PIERCE, HENRY CLAY PIERCE and PIERCE INVESTMENT TRUST COMPANY, Appellants,

vs.

UNITED STATES OF AMERICA.

Appeal from the District Court of the United States for the Eastern District of Missouri.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Missouri, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court, in this cause, be, and the same is hereby, affirmed without costs to either party in this Court.

April 28, 1919.

79 In the United States Circuit Court of Appeals, Eighth Circuit.

No. 5145.

CLAY ARTHUR PIERCE, H. CLAY PIERCE, PIERCE INVESTMENT TRUST COMPANY, Appellants,

vs.

UNITED STATES OF AMERICA, Appellee.

Appeal from the District Court of the United States for the Eastern District of Missouri.

Petition of Appellants for a Rehearing.

May it please the Court:

Clay Arthur Pierce, H. Clay Pierce and the Pierce Investment Trust Company, appellants in the above-entitled cause, come now and move this Court for a rehearing in this case, and for such other and further proceedings therein as to this Court may seem just and proper.

80 For grounds for granting of this petition, appellants show to the Court:

1. The decree of the District Court below awarded interest at 6 per cent from January 29, 1907 (Rec., pp. 58 and 59). The indictment was filed on January 29, 1907. Conviction was obtained at the trial on March 20, 1914 (Rec., p. 2). Thus it is seen that the court below awarded interest, not from the date of conviction, but from the date of the indictment. This interest amounts to over $10,000.00. It is well settled under the authorities that no interest can be allowed on a judgment for a penalty under the criminal statutes.

United States v. Jacob Schmidt Brew. Co., 254 Fed. 714.
State v. Streen, 14 Tex. 396, 398.
People v. Railway, 129 Cal. 545, 79 Am. St. Rep. 137.

Certainly if judgments for fines do not bear interest there can be no allowance of interest from the time of the indictment. To allow interest from the date of the indictment would do away entirely with the presumption of innocence of the accused, and assumes that a debt was created as due to the United States by the defendant at the time of the indictment. We contend that these propositions are untenable and not supported by the authorities. In the case of the United States v. Jacob Schmidt Brewing Co., supra, the Court said:

"Judgments imposed as a punishment for the violation of a criminal law stand in a class by themselves. They do not survive the death of the party against whom they are entered, so as to be
81 a charge upon his estate (United States v. Mitchell [C. C.], 163 Fed. 1014; United States v. Dunne, 173 Fed. 254, 97 C. C. A. 420, 19 Ann. Cas. 1145). California has a statute almost identical with that of the State of North Dakota, and it has been ruled under that statute that judgments imposed as a fine for the violation of criminal law, do not bear interest (People ex rel. Warfield v. Sutter, 129 Cal. 545, 62 Pac. 104, 79 Am. St. Rep. 137).

This subject, however, is settled for Federal Courts by Section 966 of the Revised Statute (Section 1605 of United States Compiled Statutes for 1916). That statute provides as follows: 'Interest shall be allowed on all judgments in civil causes, recovered in a Circuit or District Court, etc.'

Congress having undertaken to deal with the subject of interest upon judgments, and having expressly restricted the allowance of interest to judgments in civil causes, the implication is strong that judgments in criminal causes do not bear interest.

My conclusion, therefore, is that the Government is not entitled to interest upon the judgment in the above-entitled cause."

We submit that the Court erred in allowing any interest whatever.

2. In the oral argument before this Court, it was argued that the United States was a subsequent creditor, if a creditor at all, and hence

was not in a position to question the transfer of the property of the Waters Pierce Oil Company to the Pierce Oil Corporation. We furnished authorities to the Court by an extra typewritten page in the brief; it appears that this point was overlooked and was
82 not touched upon in the opinion of the Court.

The conviction was obtained on March 20, 1914. The transfer by the Waters Pierce Oil Company to the Pierce Oil Corporation took place on July 9, 1913. If a debt was created by the conviction, it was not created until that day; hence, since the transfer took place previous to the conviction, the United States was a subsequent creditor, if a creditor at all. In the case of Graham v. Railroad, 102 U. S. 148, 26 Law Ed. 106, l. c. 111, the Court said:

"We see no reason why the disposal by a corporation of any of its property should be questioned by subsequent creditors of the corporation, any more than a like disposal by an individual of his property should be so questioned; the same principles of law apply to each."

3. The Court in the majority opinion lays stress on the statute of the United States authorizing the collection of a judgment for crime as in civil cases (R. S., Section 1041; 3 U. S. Comp. Stat. 1916, Sec. 1705). This statute provides only for execution; there is no provision for a creditor's bill. This statute does not attempt to give a judgment for a fine the attribute of a debt where there was no debt before. A judgment for a fine cannot be proved against the estate of a deceased defendant and does not draw interest, nor has it any other attribute of a debt. (See cases cited under point 4 of this petition.)

There is nothing in this statute to show that Congress intended to convert a judgment for a fine into a debt, so as to make it a basis for a creditor's bill. The statute is remedial only and merely recognizes the rights that theretofore existed. A debt arises
83 out of contract, express or implied. Congress cannot make contracts for the parties. The statute as construed by the majority opinion and applied in this case, is void, for it would infringe upon the sacred rights of every citizen with respect to the right of contract.

The statutes of the United States, therefore, do not authorize the collection by means of a creditor's bill of a fine imposed as criminal punishment. The statutes regulate the manner of collecting fines. The criminal laws of the United States are entirely statutory, hence any criminal remedy must be found in the statutes of the United States (Jones v. United States, 137 U. S. 202; R. S., section 1041).

4. The appellants contend that a creditor's bill can be brought only for the collection of civil debts, and that it cannot be used as ancillary to a criminal prosecution; and that a fine imposed as a punishment can, because of its very nature, be imposed only against the person convicted of the crime. The Waters Pierce Oil Company was adjudged guilty of the crime in question and not the stockholders of that company. A judgment assessing the fine does not convert

the fine of the Waters Pierce Oil Company into a debt, nor does the Government become a creditor. In the matter of Schreiber, 110 U. S. 76, 28 Law Ed. 65, the Court held that an action for a penalty under the statutes of the United States did not survive against the legal representations of the deceased defendant. In the case of United States v. Dunne, 173 Fed. 254 (C. C. A., 9th Cir.), the Court holds that a judgment for a statutory penalty, under the statutes of the United States, cannot be made the basis of a claim of the United States against the estate of the deceased defendant. The Court
84 further held that the merging of the penalty into a judgment did not change the essential nature of the penalty. In the case of Chicago v. Morrell, 247 Ill., 283, the Court held that a penalty imposed in violation of a city ordinance was not a debt. Peterson v. State, 79 Neb. 132, holds that a penalty for violation of a speed ordinance was not a debt, within the constitutional prohibition against imprisonment for debt. Hall v. Colman, 130 Ga. 734, held that a fine was not a debt due the State. Spalding v. State ex rel. Backus, 45 U. S. 21, held that a fine for violation of an injunction was not a debt so as to be affected by a discharge in bankruptcy. In re Southern Steel Co., 183 Fed. 498, held that a statutory penalty for cutting trees was not a debt. State v. American, 141 N. C. 726, held that a fine in bastardy proceedings is not a debt. In re Sutherland, 23 Fed. Cas. 456, 457, holds that a fine is not a debt provable in bankruptcy. Spalding v. People, 7 Hill 301, held that a fine is not a debt discharged in bankruptcy. Whiteacre v. Rector (Va.), 26 Am. Rep. 420, holds that a fine is not a debt within the meaning of the law exempting homesteads from levy in satisfaction of a debt. United States v. Jacob Schmidt Brew. Co., 254 Fed. 714, holds that a judgment for a fine does not bear interest.

From the foregoing authorities it can be readily seen that a fine cannot be considered a debt for the purpose of creating the relationship of debtor and creditor. Since there is no debtor there can be no creditor. A creditor's bill cannot be based upon a fine. No case has been cited by the Government, nor was any cited by the majority opinion, where a creditor's bill was allowed in the collection of a fine for violation of a penal statute. We respectfully submit
85 that the majority opinion was therefore erroneous in holding that the bill in the present case can be maintained.

The following authorities seem to demonstrate conclusively that the fine in question cannot be enforced against the stockholders of the Waters Pierce Oil Company, who had no part in the committing of the crime in question:

United States v. Thurer, 213 Fed. 964.
Dyar v. United States, 186 Fed. 614.
United States v. Mitchell, 163 Fed. 1044.
In re Green, 52 Fed. 104.
United States v. Wood, 145 Fed. 405.
Pacific Coal Co. v. United States, 173 Fed. 737.
New York Central v. United States, 212 U. S. 481.

5. The appellee had a plain, adequate and complete remedy at law, and this remedy at law had not been exhausted. Section 263 of the Judicial Code provides that:

"Suits in equity shall not be sustained in any court of the United States in any case where a plain, adequate and complete remedy may be had at law."

The contract between the Waters Pierce Oil Company and the Pierce Oil Corporation expressly provided for the settlement of all "debts, liabilities and obligations" of the Waters Pierce Oil Company. Assuming that the Court is right in its majority opinion that the liability of the Waters Pierce Oil Company on the judgment in question is a debt, then it is one of the debts expressly contracted to be paid by the Pierce Oil Corporation.

86 The bringing of the suit by the United States on this contract acted as an election on the part of the United States to pursue its remedy at law. After having filed suit on the contract, the Government then brought the present suit in equity. The Waters Pierce Oil Company turned over to the Pierce Oil Corporation all of its assets, and the Government saw fit to proceed against the Pierce Oil Corporation to secure part of these assets with which to satisfy the judgment in question.

We contend that the action of the Government in the proceedings in the Louisiana case is conclusive evidence against appellee that the Government has a remedy at law. We respectfully submit that there is no better way of showing that a party has a remedy at law than that he has already filed a suit at law. We have always understood that a court of equity would not give its extraordinary remedy and relief where a party had already solemnly stated that he had a remedy at law, and was proceeding with that remedy.

There is no suggestion that the remedy in the Louisiana case is inadequate, or that if a judgment is secured, the judgment will not be paid. There is no suggestion that the remedy in the Louisiana case is incomplete; indeed, the very pendency of the suit is evidence that the Government considered it the proper remedy to secure the necessary relief.

Unless we are to disregard Section 263 of the Judicial Code entirely, we fail to see how the Court can practically overlook the pendency of the Louisiana case.

6. We submit that the Court erred in the majority opinion in holding the trust fund theory applicable. The trust fund

87 theory is that upon insolvency of a corporation, its property becomes a trust fund for its creditors. In the present case there was no creditor since there was no debtor, as we have heretofore pointed out.

The judgment below was a general judgment against the stockholders of the Waters Pierce Oil Company. There was no judgment fastened upon any assets of the Waters Pierce Oil Company. The judgment did not follow the physical property of the Waters

Pierce Oil Company into the hands of the Pierce Oil Corporation. The Government is in no position to insist upon the trust fund theory, especially as it now has a suit at law pending in Louisiana by which it seeks to hold the Pierce Oil Corporation liable for having secured all the assets of the Waters Pierce Oil Company.

Neither the Pierce Oil Corporation nor the Waters Pierce Oil Company were ever insolvent. It is not alleged, nor was it ever claimed, by the Government, that the Waters Pierce Oil Company or the Pierce Oil Corporation were guilty of any fraud in attempting to evade the fine in question, or in attempting to evade any of their obligations. There is no allegation in the bill, nor was it ever claimed by the Government, that the stockholders of the Pierce Oil Corporation were guilty of any fraud, or attempted to perpetrate any fraud. We cannot see how the trust fund theory is applicable, and we submit the majority opinion is erroneous in this regard.

Hageman v. Railroad, 202 Mo., l. c. 264.
Colman v. Hagey, 252 Mo. 102, l. c. 136.
Hollins v. Briersfield Co., 150 U. S., l. c. 385.
Gresham v. Railroad, 102 U. S. 148.
Wabash Co. v. Ham, 114 U. S., l. c. 594.
Savings Bank v. Ritchey, 121 Fed. 956, 959.

88 7. The Court did not consider, or at least did not give serious consideration to, our assignments of error, Nos. 3, 4, 5, 6 and 7 (Appellant's Brief, p. 6), which set forth that the bill is multifarious and that there were misjoinders of parties defendant and causes of action. We respectfully submit that the bill should be dismissed for this cause.

Savings Bank v. Ritchey, 121 Fed. 956.
Central Bank v. Fitzgerald, 94 Fed. 16.
Hayden v. Thompson, 67 Fed. 273, l. c. 276.

8. The Court did not consider, or at least did not give seriour consideration to, our assignments of error, Nos. 8, 9, 11 and 12 (Appellant's Brief, p. 7). We are firmly of the opinion that there is no power in the Congress or courts of the United States to impose a punishment for crime on individuals who are not alleged to have had the slightest part in it, and that any statute or decision securing such result, would be unconstitutional. This would require the defendants to answer for an infamous crime without a presentment or indictment of the grand jury, contrary to the Fifth Amendment of the Constitution of the United States, and would deprive the defendants of a trial by jury, contrary to the Sixth Amendment of the Constitution of the United States, and would deprive the defendants of their property without due process of law, contrary to the Fifth Amendment of the Constitution of the United States. If the defendants are accused of a conspiracy punishable by Section 37 of the Revised Penal Code of the United States (March 4, 1909), then

89 the defendants have been compelled to be witnesses against themselves in a criminal case, contrary to the Fifth Amendment of the Constitution of the United States.

In re Neilson, 131 U. S. 176.
In re Bonner, 151 U. S. 242.

9. The present suit was prematurely brought, in that no execution had been issued out of the Louisiana court at the time of the filing of the suit, and none was issued until after the filing of the original bill in this cause. There is no allegation nor stipulated fact to show that a judgment had been obtained against the Waters Pierce Oil Company in Missouri, nor any effort made to obtain one, nor that it was impossible to obtain one.

Under the decision of the National Tool Works v. Ballou, 146 U. S. 517, the present case is not well founded in equity; the practice in a case like this one at bar has always required the securing of a judgment in the district where the suit in equity is brought. In order to maintain a creditor's bill, the creditor must first show he has secured a judgment in this district. Under the Ballou case the bill cannot be maintained. This point was not mentioned in the majority opinion, and we submit that this ruling of the Supreme Court requires a dismissal of the bill.

We are reluctant to present a motion for a rehearing to this busy court. However, we earnestly believe that the matters involved are of such great moment, not only to the United States but to the parties defendants, that we are doing our duty in calling the Court's attention to what we believe were errors, and that the dissent-
90 ing opinion filed herein adds color to our position.

Respectfully submitted,

S. W. FORDYCE, Jr.,
JOHN H. HOLLIDAY,
THOMAS W. WHITE,
GEORGE T. PRIEST,
ALBERT D. NORTONI,
J. MARKHAM MARSHALL,
Solicitors for Appellants.

Certificate of Counsel.

We, Thomas W. White and George T. Priest, Albert D. Nortoni, solicitors for appellants, hereby certify that in our judgment the foregoing petition for a rehearing is true in fact and point of law and is not interposed for delay.

THOS. W. WHITE,
GEO. T. PRIEST,
ALBERT D. NORTONI,
Solicitors for Appellants.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, May 23, 1919.

91 (*Opinion on Rehearing.*)

United States Circuit Court of Appeals, Eighth Circuit, May Term, A. D., 1919.

No. 5145.

CLAY ARTHUR PIERCE, H. CLAY PIERCE, PIERCE INVESTMENT TRUST COMPANY, Appellants,

vs.

UNITED STATES OF AMERICA, Appellee.

Appeal from the District Court of the United States for the Eastern District of Missouri.

On Petition for Rehearing.

Before Hook and Stone, Circuit Judges, and Wade, District Judge.

Per Curiam:

It is urged that the trial court erred in the matter of interest included in the judgment under review. As this question was not raised by the assignments of error and briefs at the hearing we do not think it should be considered now. The other matters in the petition for rehearing were fully considered and we see no reason for changing the conclusion.

The petition is denied.

Wade, District Judge, adheres to the views expressed in his dissenting opinion previously filed.

Filed July 15, 1919.

92 (*Order Denying Petition for Rehearing.*)

May Term, 1919.

Tuesday, July 15, 1919.

This cause came on this day to be heard upon the petition for a rehearing, filed by Counsel for Appellants.

On consideration whereof, it is now here ordered by this Court, that said petition for a rehearing of this cause, be, and the same is hereby, denied.

July 15, 1919.

(Petition for Appeal to Supreme Court, U. S., and Allowance Thereof.)

The above named appellants, Clay Arthur Pierce, Henry Clay Pierce and Pierce Investment Trust Company, conceiving themselves aggrieved by this action of this honorable Court in entering the decree of April 28, 1919 therein, and in entering the order of July 15, 1919, overruling appellants' petition for re-hearing, do hereby appeal from said decree and order to the Supreme Court of the United States, and do pray that this, their appeal, may be allowed, and that a transcript of the record and proceedings and papers upon which said decree and order were made and duly authenticated may be sent to the Supreme Court of the United States.

BOYLE AND PRIEST,
ALBERT D. NORTONI,
FORDYCE, HOLLIDAY & WHITE,
Attorneys for Appellants.

Now, to-wit, on this 4th day of August, 1919, it is ordered that the appeal be allowed as prayed for.

KIMBROUGH STONE,
U. S. Circuit Judge in and for the Eighth Circuit.

93 (Endorsed:) Filed in U. S. Circuit Court of Appeals, Aug. 6, 1919.

(Assignment of Errors on Appeal to Supreme Court U. S.)

Now come Clay Arthur Pierce, Henry Clay Pierce, and Pierce Investment Trust Company, Appellants in the above entitled cause, and file the following assignment of errors, upon which they will rely in their prosecution of the appeal in the above entitled cause from the decree of the Circuit Court of Appeals, entered April 28th, 1919, to the Supreme Court of the United States:

I. That the Court of Appeals erred in refusing to hold that the District Court erred in refusing to dismiss the first amended bill and in overruling appellants' separate motions to that end, for the reason that:

a) Said amended bill does not state a cause of action cognizable in equity.

b) Said amended Bill is multifarious, in that it sets forth separate and distinct claims or causes of action against separate defendants.

c) That there is a misjoinder of parties defendant in that stockholders are joined with trustees for a corporation and the alleged claim or cause of action does not affect them in the same capacity or affect the same res.

d). Said amended bill shows upon its face that complainant therein has a plain, adequate and complete remedy at law.

e) It appears from said bill that necessary parties defendant, to-wit: the remaining stockholders of the Waters Pierce Oil Company are not joined as defendants therein.

II. The Court of Appeals erred in failing and refusing to hold that the action of the District Court in compelling appellants
94 to answer to the bill and in awarding a decree against appellants deprived them of rights guaranteed by the Fifth Amendment to the Constitution of the United States, in that appellants were compelled to answer for an infamous crime without presentment or indictment of a grand jury, and were compelled to be witnesses against themselves in a criminal case, and were thus deprived of their property without due process of law.

III. The Court of Appeals erred in failing and refusing to hold that the action of the District Court deprived appellants of a trial by jury in an action for the recovery of a fine under a penal statute, contrary to the provisions of the Sixth Amendment to the Constitution of the United States.

IV. That the allegations of the bill charged defendants with a conspiracy to defraud the United States, in violation of Section 37 of the Penal Code and that by compelling appellants to answer said bill they have been compelled to be witnesses against themselves and are deprived of a jury trial, in violation of the provisions of the Sixth Amendment to the Constitution of the United States, and the Court of Appeals erred in failing and refusing so to hold.

V. The Court of Appeals erred in failing and refusing to hold that the filing of the suit on February 4th, 1916, by the United States of America against the Pierce Oil Corporation, filed within the Western District of Louisiana upon the same cause of action set forth in the bill herein, constituted an election of remedies, and in failing and refusing to hold that such election barred the maintenance of the present suit.

VI. The Court of Appeals erred in failing and refusing to hold that the filing of a suit by the United States on February 4th, 1916, in the Western District of Louisiana, against the Pierce Oil Corpor-
ation, constituted an acceptance of the offer contained in the
95 contract between the Waters Pierce Oil Company and the Pierce Oil Corporation, in which the latter assumed the debts and obligations of the former, and in failing and refusing to hold

that the filing of such suit constituted a novation and released the Waters Pierce Oil Company.

VII. The Court of Appeals erred in failing and refusing to hold that under the agreed statement of facts the plaintiff had a plain, adequate and complete remedy at law.

VIII. The Court of Appeals erred in affirming the decree of the District Court in awarding the United States interest from the date of the indictment within the Western District of Louisiana, towit: January 29th, 1907, when conviction thereupon was not obtained until March 20th, 1914, and erred in affirming the award of interest upon the judgment obtained on said last named date.

IX. The Court of Appeals erred in holding that the judgment for a fine constituted a debt on which a creditor's bill would lie and enforceable by such civil remedy in equity.

X. The Court of Appeals erred in failing and refusing to hold that such alleged debt, if a debt at all, was not enforceable in this proceeding, for that such debt, if a debt, constituted the United States a subsequent creditor and it is therefore not entitled to maintain this bill.

XI. The Court of Appeals erred in failing and refusing to hold that the suit was prematurely brought, in that at the time of the filing of the original bill no execution had been issued to the Marshall of the Eastern District of Missouri against the Waters Pierce Oil Company and in that no judgment at law had been secured in the Eastern District of Missouri before the filing of said suit.

XII. The Court of Appeals erred in refusing to grant appellants' petition for rehearing for the reasons therein stated.

96 Wherefore, appellants pray that said decree be reversed and that the Circuit Court of Appeals of the United States for the Eighth Circuit be ordered to enter a decree reversing its decree of April 28th, 1919, and that a decree in favor of appellants and dismissing respondent's bill be entered.

BOYLE & PRIEST,
Solicitors for Clay Arthur Pierce.
FORDYCE, HOLLIDAY & WHITE,
Solicitors for Henry Clay Pierce and Pierce Investment Trust Company.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Aug. 6, 1919.

(*Stipulation as to Supersedeas Bond on Appeal to Supreme Court, U. S.*)

It is agreed that with the consent of the Court, the United States of America will not interpose any objection to a bond in the penal sum of thirty thousand dollars ($30,000.00), acting as a supersedeas in this cause.

BOYLE & PRIEST,
ALBERT D. NORTONI,
FORDYCE, HOLLIDAY & WHITE,
Attorneys for Appellant.

ROBERT A. HUNTER,
BENJ. L. WHITE,
Attorneys for Appellee.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Aug. 6, 1919.

97 (*Bond on Appeal to Supreme Court, U. S.*)

Know all men by these presents, That we, Clay Arthur Pierce, Henry Clay Pierce and Pierce Investment Trust Company, a corporation, as principal, and Maryland Casualty Company, a corporation, of Baltimore, Maryland, as surety, are firmly bound unto the United States of America, in the sum of thirty thousand dollars ($30,000.00), to be paid to the said United States of America, for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 28th day of July, 1919.

Whereas, the above named Clay Arthur Pierce, Henry Clay Pierce and Pierce Investment Trust Company have prosecuted an appeal to the Supreme Court of the United States, to reverse the decree rendered in the above entitled cause by the Circuit Court of Appeals, for the Eighth Circuit.

Now, therefore, the condition of this obligation is such that if the above named Clay Arthur Pierce, Henry Clay Pierce and Pierce Investment Trust Company shall prosecute said appeal to effect, and answer all damages and costs, and pay such sum as awarded in said decree, if they fail to make said appeal good, then this obligation shall

be void, otherwise the same shall be and remain in full force and effect.

CLAY ARTHUR PIERCE,
By BOYLE AND PRIEST.
ALBERT D. NORTONI.
HENRY CLAY PIERCE,
By FORDYCE, HOLLIDAY & WHITE,
His Atty'-.
PIERCE INVESTMENT TRUST COMPANY,
By FORDYCE, HOLLIDAY & WHITE,
Its' Att'y-.
MARYLAND CASUALTY COMPANY,
By LAURENCE H. PHISTER.

[SEAL.]

98 Approved:

KIMBROUGH STONE,
U. S. Circuit Judge.

(Power of Attorney attached to original bond.)

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Aug. 6, 1919.

(*Præcipe for Transcript on Appeal to Supreme Court, U. S.*)

The clerk, in preparing the record on appeal to the Supreme Court of the United States, in the above entitled cause, will include the following:

1. The transcript of record as filed in the Court of Appeals, on appeal from the District Court.

2. The minutes and record entries of proceedings in the Circuit Court of Appeals.

3. The opinion of the Circuit Court of Appeals and dissent of Wade, J.

4. Judgment and decree of the Circuit Court of Appeals.

5. Petition for re-hearing and per curiam opinion overruling same.

6. Petition for appeal and the allowance thereof.

7. Stipulation.

8. Supersedeas bond.

9. Assignment of errors and prayer for reversal.

99 10. Citation.

BOYLE AND PRIEST,
ALBERT D. NORTONI,
FORDYCE, HOLLIDAY & WHITE,
Attorneys for Appellants.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Aug. 6, 1919.

100 United States of America to United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, D. C., within thirty days from and after the date hereof, pursuant to an appeal allowed and filed in the Clerk's office of the United States Circuit Court of Appeals for the Eighth Circuit, wherein Clay Arthur Pierce, Henry Clay Pierce and Pierce Investment Company are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants as in said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Kimbrough Stone, United States Circuit Judge in and for the Eighth Circuit, this 4th day of August, A. D. 1919.

KIMBROUGH STONE,
United States Circuit Judge for the Eighth Circuit.

Marshal's Return.

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, ss:

I do hereby certify that in the City of St. Louis, in the State of Missouri, in the Eastern Division of the Eastern Judicial District of Missouri, on the Sixth day of August, 1919, I executed the within writ, by delivering a true and correct copy thereof, as furnished by the Clerk of the Court, to Benjamin L. White, Assistant United States Attorney, for the Eastern District of Missouri, and who is and was in charge of the office of the United States Attorney at St. Louis, Missouri, at the time of said service.

JOHN E. LYNCH,
United States Marshal,
By G. S. LYNCH,
Deputy.

[Endorsed:] No. 5145. Clay Arthur Pierce et al., Appellants, vs. United States of America. Citation on Appeal to Supreme Court U. S. Filed Aug. 6, 1919. E. E. Koch, Clerk, No. 3565.

101 *(Clerk's Certificate.)*

United States Circuit Court of Appeals, Eighth Circuit.

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the Eastern District of Missouri, as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, and full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, prepared in accordance with the præcipe of counsel for appellants, in a certain cause in said Circuit Court of Appeals wherein Clay Arthur Pierce, et al., were Appellants, and the United States of America was appellee, No. 5145, as full, true and complete as the originals of the same remain on file and of record in my office.

I do further certify that the original citation with Marshal's return of service is hereto attached and herewith returned.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit at office in the City of St. Louis, Missouri, this nineteenth day of August, A. D. 1919.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Endorsed on cover: File No. 27,293. U. S. Circuit Court Appeals, 8th Circuit. Term No. 538. Clay Arthur Pierce, Henry Clay Pierce and Pierce Investment Company, Appellants, vs. The United States of America. Filed September 8th, 1919. File No. 27,293.